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PROSPECTS FOR THE ORGANIZATION OF JUDICIAL OVERSIGHT IN THE LEGAL APPLICATION OF CIRCUMSTANCES PRECLUDING PROCEEDINGS

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Abstract: *This article examines the prospects for strengthening judicial oversight in the application of grounds excluding criminal proceedings within the criminal justice system of the Republic of Uzbekistan. The study analyzes existing procedural mechanisms governing decisions to refuse the initiation of criminal proceedings or to terminate criminal cases without resolving the issue of guilt, as well as the legal consequences arising from such decisions. Particular attention is paid to the shortcomings of the current model, in which prosecutorial supervision remains the primary form of review over decisions adopted by pre-investigation, inquiry, and preliminary investigation bodies. Through comparative legal analysis of the legislation and practices of Russia, Kazakhstan, Moldova, Armenia, Azerbaijan, Finland, and other foreign jurisdictions, the research substantiates the necessity of expanding judicial control over procedural decisions affecting individual rights and freedoms. The article argues that the absence of effective judicial review may lead to repeated cancellation and reinstatement of criminal cases, prolonged procedural uncertainty, and unjustified restrictions on constitutional rights. The author proposes introducing a judicial procedure for reviewing complaints against decisions refusing to initiate criminal proceedings, suspending investigations, or terminating criminal cases, thereby ensuring greater legality, transparency, and protection of human rights during pre-trial proceedings. Furthermore, the study addresses issues related to criminal-legal statistics, archival storage of procedural materials, preventive registration practices, and the participation of defense counsel in proceedings*

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terminated on non-rehabilitative grounds. The findings demonstrate that strengthening judicial oversight would enhance procedural guarantees, prevent arbitrary interference with individual rights, improve public confidence in the justice system, and contribute to the development of a more balanced and rights-oriented criminal procedure framework.

Keywords*: judicial oversight, criminal proceedings, grounds excluding proceedings, termination of criminal cases, refusal to initiate criminal proceedings, prosecutorial supervision, pre-trial proceedings, protection of human rights, criminal procedure, judicial review, procedural guarantees, criminal justice reform, Uzbekistan, comparative legal analysis, habeas corpus..*

INTRODUCTION

In recent years, our country has placed special emphasis on reforms in the judicial and legal sphere; in particular, the need to develop the institution of terminating criminal cases without resolving the question of guilt constitutes a crucial part of these reforms.

This research analyzes the practical problems that arise in improving the legal and procedural grounds for circumstances precluding proceedings, while also employing methods of comparative legal analysis, observation, generalization, induction, and deduction.

In legal practice, it cannot be said that this issue has been fully resolved. Specifically, in accordance with Articles 338 and 382 of the current Criminal Procedure Code, it is established that the prosecutor supervises decisions to refuse or terminate proceedings made by pre-investigation check, inquiry, and preliminary investigation bodies. In such cases, the prosecutor vacates the decision and orders an additional pre-investigation check or a supplementary investigation. It is well-known that prosecution authorities are also bodies of pre-investigation check, inquiry, and preliminary investigation and possess procedural powers in these areas. In our opinion, it is incorrect that decisions made by these bodies are supervised only by the prosecutor or a superior prosecutor. This is because the rights of the individuals against whom a decision is being made can be repeatedly restricted.

For example, according to the documents of criminal case No. 32/19-1227, initiated by the Chilanzar district prosecutor's office under Article 228 of the Criminal Code against the founder of "NAVOI CORPORATION" LLC, the criminal case was opened on April 12, 2019. Although almost three years have passed, no final decision has been made. The criminal case was repeatedly terminated by investigators on the grounds that the statute of limitations for criminal liability had expired, as the act of document forgery itself was committed in 2006 (16 years ago). Furthermore, the prosecution authorities have repeatedly reopened the criminal case.

In total, a decision to terminate this criminal case was made 7 times, and all decisions were overturned by the

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prosecutor's offices of the city of Tashkent[1].

The aforementioned criminal case, despite being terminated several times, was reinstated and returned for supplementary investigation because the Criminal Procedure Code does not specify a limit on terminating and reopening a criminal case. In this regard, scholars have expressed the following opinions.

According to E.V. Kolomees [2, pp. 186-189], K.A. Tabolina [3, pp. 229-230], I.R. Astanov [4, pp. 8-12], S. Li [5, pp. 141-150], J. Zila [6, pp. 90-93], and V.M. Bykov [7, pp. 30-34], since the prosecutor is responsible for monitoring the legality of the termination of a criminal case, requiring the prosecutor's consent to adopt this decision would solve this issue by preventing its repeated reversal.

One cannot agree with the opinions of the aforementioned scholars. Incorporating their proposal into legislation would leave the process of terminating criminal cases virtually unchanged from its current state. That is, in practice, there are many instances where a decision, to which a prosecutor has consented, is then overturned by a superior prosecutor. The case cited above is a clear example of this.

In this regard, the opinions of McKevit [8, p. 122], J. Ross, S. Taman [9, p. 576], A.A. Khaydarov, and N.S. Didenko [10, p. 336] are noteworthy. They assert that the courts must have the final say when appealing a decision to refuse or terminate proceedings.

Agreeing with these views, it must be acknowledged that public trust in the courts is steadily increasing. Moreover, in recent years, reforms have been carried out in our country to strengthen judicial protection, namely by guaranteeing every individual the right to defend their rights through the courts during the pre-trial stage, expanding the practical application of the "Habeas Corpus" institution, and reinforcing judicial control over investigations.

B.A.Saidov also emphasizes the need to incorporate norms into criminal procedure legislation that guarantee participants in criminal proceedings the ability to appeal directly to the court. This would apply to instances such as the decision by an official of a pre-investigation body, an inquirer, an investigator, or a prosecutor to initiate or refuse to initiate a criminal case, to order an audit, to suspend an inquiry or preliminary investigation, to terminate a criminal case, as well as any violation of the law during other investigative and procedural actions, and actions that humiliate a person's honor and dignity[11, pp. 7-8].

The information presented above substantiates the current need to strengthen judicial control to ensure guarantees for the protection of individual rights and freedoms in criminal proceedings. It also highlights the necessity of establishing a procedure for appealing not only decisions to refuse or

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terminate proceedings but also other decisions made by inquiry and preliminary investigation bodies to the courts.

However, Article 44 of the Constitution of the Republic of Uzbekistan stipulates that every person is guaranteed the right to judicial protection of their rights and freedoms and the right to appeal to a court against the unlawful actions of state bodies, officials, and public associations [12].

Furthermore, the fact that only the prosecutor is authorized to consider complaints on the above-mentioned issues cannot ensure objectivity and transparency in the preliminary investigation.

In foreign countries, particularly in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation (Judicial Review of Complaints), district courts consider complaints against decisions by competent authorities to refuse to initiate a criminal case or to terminate a criminal case. The court reviews the complaint within a 5-day period and verifies the legality and validity of the decisions rendered[13].

According to Article 106 of the Criminal Procedure Code of the Republic of Kazakhstan (Judicial Review of Complaints against Decisions and Actions (Inaction) of Criminal Prosecution Bodies and the Prosecutor), individuals may appeal to the court against decisions of the relevant authorities to refuse to initiate a criminal case or to terminate a criminal case. A person may file a complaint with the relevant district court within 15 days from the date of receiving the decision of the relevant authority or the prosecutor's decision to deny the complaint[14].

Chapter 8 of the Criminal Procedure Code of the Republic of Moldova, "Judicial Control over Pre-trial Procedural Actions"[15]; Chapter 39 of the Criminal Procedure Code of the Republic of Armenia, "Judicial Control Prior to Court Proceedings"[16]; Chapter LII of the Criminal Procedure Code of the Republic of Azerbaijan, "Implementation of Judicial Control"[17]; and the Criminal Procedure Codes of other states establish that individuals may appeal to the court against decisions of relevant authorities to refuse to initiate a criminal case or to terminate a criminal case.

Although criminal procedure law in Finland is not codified, these matters are covered by several laws. According to Chapter 1, Article 9 (a) of the Criminal Procedure Act, if the prosecutor, at the request of the person under preliminary investigation, decides to terminate a criminal case on the grounds provided in Articles 7 or 8 of this Act, the prosecutor shall submit the decision to the court for review[18].

In conclusion, it is advisable to put forward the following as proposals and to codify these proposals in the criminal procedure legislation.

Specifically, a decision to suspend an inquiry or preliminary investigation, or to terminate a criminal case, may be

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appealed within one year from the date it is issued.

The complaint shall be filed through the prosecutor who supervises pre-trial proceedings to the district (city) court for criminal cases or to the territorial military court at the location where the pre-investigation check, inquiry, or preliminary investigation was conducted. Upon receiving the complaint, the prosecutor is entitled to either reverse the contested decision or forward it, along with the materials of the pre-investigation check or criminal case, to the court within a 3-day period.

If a complaint is filed by a person not entitled to do so, or if it is not subject to consideration by this court, it shall be returned by the court, and a ruling shall be issued to that effect. The complaint shall be considered by a judge individually within 5 days from the date of its receipt by the court. The person who filed the complaint, their defense counsel (attorney), representative, a representative of the official from the body conducting the pre-investigation check, the inquirer, the investigator, and the prosecutor may participate in the court hearing.

Based on the results of the review of the complaint, the court shall issue a ruling to either deny the complaint or to reverse the appealed decision. A copy of the court's ruling shall be sent to the complainant and the prosecutor within a 3-day period. Furthermore, a private appeal may be filed against the court's ruling, and a submission may be filed by the prosecutor in the appellate procedure. These shall be considered by the appellate court on general grounds.

The issuance of a court ruling to reverse the decision of the body of inquiry, the preliminary investigation body, or the prosecutor, and the entry of this ruling into legal force, precludes the repeated adoption of a decision on the exact grounds specified in the reversed decision. This ruling shall enter into legal force upon the expiration of the period established by the Code for filing a private appeal or submission against it.

As is well known, Decree No. PF-5566 of the President of the Republic of Uzbekistan, "On measures for the fundamental improvement of the criminal law statistics system and for increasing the effectiveness of the systematic analysis of crimes," was adopted on October 31, 2018. The decree was aimed at improving the system of criminal law statistics, ensuring the transparency of crime accounting, and increasing the effectiveness of the fight against crime through the targeted analysis of the causes of their commission.

This Decree stipulated the maintenance of a unified record of information on criminal cases, pre-investigation materials, court proceedings, and the results of the execution of court decisions, as well as on participants involved as accused persons and victims, through the creation of electronic statistical forms. It also mandated the introduction of an electronic data exchange system between

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the prosecutor's office, courts, and other state bodies of preliminary investigation and inquiry, including through the integration of information systems and databases, and provided for the optimization of procedures for maintaining criminal law statistics and the elimination of the human factor in their compilation process [19].

In accordance with the requirements of the aforementioned decree and Decree No. PF-6196 of the President of the Republic of Uzbekistan dated March 29, 2021, "On measures to elevate the activities of internal affairs bodies in the field of ensuring public safety and combating crime to a qualitatively new level," Chapter 3 of the Regulation, approved by Joint Decision Nos. 70, 71-qq, 30, 01-02/22-56, 34, 16/1020-21 of the Ministry of Internal Affairs, the Prosecutor General's Office, the State Security Service, the State Customs Committee, the National Guard, and the Supreme Court of the Republic of Uzbekistan on November 15, 2021, sets out the procedure for completing and submitting unified electronic statistical forms for recording detected or committed crimes. Specifically, it establishes that when a criminal case is initiated, or when the initiation of a case is refused based on paragraphs 1, 2, 3, 6, and 8 of part one and part 5 of Article 84 of the Criminal Procedure Code, a number shall be electronically assigned from the unified electronic journal in the prescribed order, and at the same time, all types of statistical forms (Form-1, 1.1, 2, 3, 4) shall be completed [20].

In this regard, scholars hold a different view. Namely, B. Murodov asserts that, "In the event of a refusal to initiate a criminal case in the manner prescribed by this article of the Criminal Procedure Code, the act should not be registered as a crime. That is, in this case, it is incorrect to fill out the 'Form-1' card and include the person who committed a socially dangerous act in the Information Center's records in the established manner" [21, pp. 99-100].

A group of scholars argues that this is an error, based on the requirements of the principle of the presumption of innocence. They have acknowledged that a person cannot be officially considered "guilty" in the absence of a legally binding guilty verdict from a court, and that it is therefore impermissible to register them and apply preventive measures against them. Taking into account that, in accordance with Article 4 of the Criminal Code, the criminality, punishability, and other legal consequences of a committed act are determined solely by the Criminal Code, they have recognized that equating persons exempted from liability under Article 325 of the Criminal Procedure Code with previously convicted persons contradicts all principles.

The opinions of the aforementioned scholars are valid; however, we believe it is also incorrect not to register these incidents as crimes when all the elements of a crime as stipulated in the Criminal

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Code are present. Indeed, in accordance with Article 4 of the Criminal Code, the criminality of a committed act, its punishability, and other legal consequences must be determined solely by the Criminal Code. This, in turn, leads us to the conclusion that the institution of private prosecution should also be included in the Criminal Code as a substantive norm that exempts from liability.

Therefore, when a criminal case is refused to be initiated on this ground of the Criminal Procedure Code, we conclude that it should still be registered as a crime, and this is justified, as all the elements of the crime stipulated in the Criminal Code are fully identified. The only caveat is that these individuals should not be placed on a list equivalent to that of convicted persons, nor should they be recorded based on inquiries through a single interactive portal. In other words, while this statistical data should be used for recording general crime, combating it, and in operational-investigative activities, it is completely wrong for these records to be stored as a notation in citizens' personal data. At the same time, in cases where proceedings are refused or terminated under paragraph 8 of part one of Article 84 of the CPC, it is inappropriate to fill out and register statistical cards for them.

Furthermore, we agree with the opinions expressed regarding the impossibility of applying preventive measures to these registered individuals. We believe that the following phrase should be removed from the list of "Persons subject to preventive registration" provided for in Article 35 of the Law of the Republic of Uzbekistan No. ZRU-371 "On the Prevention of Offenses" dated May 14, 2014: "persons against whom a decision has been issued to terminate a criminal case without resolving the issue of guilt or to refuse to initiate a criminal case on non-rehabilitating grounds, in accordance with Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan;." The reason is that, in addition to contradicting all the guiding principles mentioned above, we believe this removal would eliminate ambiguities in the application of a ground not defined in the CPC, such as the phrase "on non-rehabilitating grounds" within the norm.

Additionally, the existence of inconsistent practices across the regions of our Republic in handling this ground is another existing problem. Some time ago, in certain regions, when the initiation of a criminal case was refused under paragraph 6 of part one of Article 84 of the CPC, all statistical cards that would be filled out during a preliminary investigation were completed in full and submitted to information centers. In contrast, in other regions, when proceedings were refused on this same basis, the pre-investigation inquiry documents were sent to the archives without any statistical cards being filled out. For this reason, an unfounded view emerged among practitioners that it was impossible to terminate a criminal case on

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this ground after it had already been initiated.

Another one of the main, yet unseen, problems stemming from such inconsistency is the lack of a unified system of archival work across the existing practices of pre-investigation inquiry, inquest, and preliminary investigation.

According to paragraph 34 of Appendix 1 of the "Regulations on the Procedure for Maintaining the Unified Information System 'Electronic Criminal-Legal Statistics'," established by Joint Resolution No. 70, 71-qq, 30, 01-02/22-56, 34, 16/1020-21 of the Ministry of Internal Affairs, the Prosecutor General's Office, the State Security Service, the State Customs Committee, the National Guard, and the Supreme Court of the Republic of Uzbekistan dated November 15, 2021, it is stipulated that when the initiation of a criminal case is refused as a result of a pre-investigation check or a criminal case is terminated, the Form 1.1 statistical card is registered. Following a prosecutor's conclusion on the legality of the decision made, the criminal case and pre-investigation check materials are to be stored by the bodies (inquiry, preliminary investigation, and pre-investigation check bodies) and courts that conducted them, in the prescribed manner[20].

In this regard, while it is established that terminated criminal cases within the Ministry of Internal Affairs of the Republic of Uzbekistan are stored for up to 25 years depending on their category, documents related to the refusal to initiate a criminal case are stored for only 3 years, regardless of the grounds for refusal[22]. Conversely, pre-investigation check documents and criminal cases[23] substantively resolved in criminal and military courts are to be sent to regional archives after their storage period in the archives of the criminal and military courts expires, based on a list of categories and in accordance with the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On Improving Archival Work in the Republic of Uzbekistan"[24].

However, the fact that this issue is handled differently across various bodies leads to the formation of inconsistent practices. This, in turn, can cause the loss of the underlying documentation for the data on the perpetrator and the criminal case recorded on the statistical cards.

From the analysis above, we can conclude the following: in accordance with the aforementioned Joint Resolution of the Ministry of Internal Affairs, the Prosecutor General's Office, the State Security Service, the State Customs Committee, the National Guard, and the Supreme Court, when a case initiation is refused based on paragraphs 1, 2, 3, 6, and 8 of part one and part 5 of Article 84 of the Criminal Procedure Code, all types of statistical cards are processed by assigning a criminal case number to the pre-investigation check file. Although the record in the information center's database identifying the individual as a perpetrator (similar to a previously

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convicted person) is retained for life, we believe it is entirely incorrect that the pre-investigation check files, which form the basis for this record, are stored for only 3 years. This is because such situations are frequently observed in practice; for instance, individuals often become aware of their past criminal prosecution or release from criminal liability without a determination of guilt only when gathering documents for employment. Dissatisfied with this discovery, they then file applications with state bodies.

Currently, when a criminal case is dismissed or terminated without resolving the issue of guilt, the individuals involved do not fully comprehend the implications of the case being resolved on these non-rehabilitating grounds. This, in turn, means that for individuals who consider themselves innocent, the dismissal or termination of proceedings on such grounds may allow the actual perpetrators in the case to evade responsibility.

According to B. Murodov, this problem can be solved by imposing an obligation on the official responsible for terminating the case on these grounds to explain the potential legal consequences of the termination[21].

I.S. Tarasov [25, p. 12] and D.V. Sinyov [26, p. 11] acknowledge that this legal problem can be solved by mandating the participation of a defense counsel. In other words, they have suggested that when proceedings are dismissed or terminated based on Article 84 of the Criminal Procedure Code, the individual must be informed of the potential legal consequences of this decision in the presence of their defense counsel.

While acknowledging the validity of these scholars' opinions, we believe that the involvement of a defense counsel in cases where proceedings are dismissed or terminated on these grounds not only ensures that the individuals fully understand the legal consequences of the decisions made, but also prevents officials from pursuing proceedings under the general procedure when the conditions for termination have been fully met. Some scholars have indicated that mandating the participation of a defense counsel does not completely resolve the problems related to the application of these grounds, and that a condition should be added to the procedural rules to not apply precautionary measures involving restriction of liberty against an individual if they demand the case be conducted under the general procedure[27].

In conclusion, we are of the opinion that ensuring the participation of a defense counsel when dismissing or terminating proceedings concerning the criminal acts of military personnel serves to protect their comprehensive rights and interests, and also secures their right to continue their service in the future.

Research Results and Analysis.

The analysis of the aforementioned procedural problems concerning the refusal and termination of proceedings allows us to draw the following conclusions.

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First, the above-mentioned proposals to grant courts the authority to review appeals against decisions to refuse or terminate proceedings, in both military and non-military cases, may lead to the following changes in the inquiry and preliminary investigation process:

– interested parties will have the opportunity to appeal a decision to refuse or terminate proceedings to another authorized state body besides the prosecutor's office;

– the practice of having issues related to the refusal to initiate a case and the termination of a criminal case in inquiry and investigative activities resolved by a single body will be eliminated;

– the lawful and just consideration of criminal cases will be ensured.

In order to expand judicial control over the inquiry and preliminary investigation, it is proposed to introduce into the Criminal Procedure Code a procedure for the judicial review of complaints against the decisions of inquiry and preliminary investigation bodies.

Second, when refusing to initiate or terminating a criminal case on certain grounds under Article 84 of the Criminal Procedure Code, it is necessary to register it as a crime, as the elements of the crime stipulated in the Criminal Code are fully present. The only distinction is that these individuals should not be placed on a list equivalent to that of convicted persons, nor should they be registered based on a query through the unified interactive portal. It is entirely inappropriate for these records to be stored as entries in citizens' personal data, although this statistic should be used for recording general crime, combating it, and in operational-investigative activities.

Third, it is advisable to remove the clause in Article 35 of the Law of the Republic of Uzbekistan No. ZRU-371 "On the Prevention of Offenses," dated May 14, 2014, as the maintenance of a preventive register for persons whose proceedings were refused or terminated based on Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan restricts their constitutional rights.

Fourth, the practice of storing pre-investigation verification documents for a period of 3 years when the initiation of a case is refused on the basis of clauses 1, 2, 3, 6, 8 of part one and part 5 of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan is incorrect. It is advisable to adopt a unified joint interdepartmental decision on organizing archival work for the storage of criminal cases, pre-investigation verification documents, and their registration books across all pre-investigation verification, inquiry, preliminary investigation, and judicial bodies.

Conclusions

In conclusion, granting interested parties the opportunity to appeal a decision to terminate a criminal case to the court will eliminate the possibility for persons responsible for conducting the preliminary investigation to exploit the

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decision to initiate or terminate a criminal case for their own benefit. This is because the just and well-founded termination of cases will be subject to judicial oversight.

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