



ANALYSIS OF THE PRACTICE OF PROCEDURAL INDEPENDENCE OF INVESTIGATORS

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ABSTRACT

This article is dedicated to a comprehensive theoretical and practical analysis of ensuring the procedural independence of investigators during pre-trial proceedings in criminal cases. The study scientifically substantiates the need to strengthen the independent status of investigators in safeguarding the rights and freedoms of individuals and citizens, and preventing legal violations in the context of ongoing judicial and legal reforms in our country. Considering the potential for state bodies and officials to restrict rights during criminal procedural activities, the procedural independence of investigators is regarded as the primary safeguard in mitigating these risks.

The article analyzes various approaches to the concept of procedural independence in legal literature. Some scholars interpret the investigator's independence narrowly, linking it only to the ability to uphold or overturn decisions made, while others interpret it broadly as the capacity to independently determine investigative and procedural actions based on inner conviction and legal consciousness.

The judicial and legal reforms being implemented in our country necessitate the creation of additional guarantees to ensure human and civil rights and prevent violations of the law. Taking into account the possibility of restrictions and violations of citizens' rights and freedoms by state bodies and officials during pre-trial proceedings in criminal cases, procedural independence in the activities of preliminary investigation and inquiry bodies has been normatively established.

According to G.P. Khimicheva, "guarantees of an investigator's procedural independence should be enshrined precisely in criminal procedural legislation, and in some cases, procedural guarantees or immunity of investigators who are part of special bodies are protected by separate legislative acts. This, in turn, means that in criminal proceedings, the parties may be unaware of their obligations, fail to fulfill these obligations, or face consequences leading to the infringement of these rights"¹, she emphasizes.

Agreeing with these opinions, it should be acknowledged that the investigator is indeed an official whose activities are regulated by the Criminal Procedure Code. This is precisely the

¹Khimicheva G.P. Pre-trial proceedings in criminal cases: the concept of improving criminal procedural activity: monograph. Moscow: Ekzamen, 2003. P. 112.

purpose of codifying the procedural norms that implement this substantive law. However, in addition to the Code, certain legislative acts also impose specific obligations on such officials.

In particular, Article 36 of the Law of the Republic of Uzbekistan "On the Commissioner for Children's Rights of the Oliy Majlis of the Republic of Uzbekistan (Children's Ombudsman)" No. ZRU-917 dated February 29, 2024, titled "Cooperation of the Commissioner for Children's Rights with law enforcement agencies and the court" stipulates that "When law enforcement agencies make a decision to initiate or refuse to initiate a criminal case upon receiving information about crimes against the life, health or sexual freedom of children, including sexual intercourse with a person under the age of sixteen, satisfaction of sexual needs in an unnatural way, or committing indecent acts against them, involving a minor as a participant in pornographic activities, engaging in pimping involving a minor, or organizing brothels, they shall notify the Commissioner for Children's Rights in writing **within three days**". In particular, Article 36 of the Law of the Republic of Uzbekistan "On the Commissioner of the Oliy Majlis of the Republic of Uzbekistan for the Rights of the Child (Children's Ombudsman)" dated February 29, 2024, No. ZRU-917 "Cooperation of the Commissioner for the Rights of the Child with law enforcement agencies and the court" states that "When law enforcement agencies decide to initiate a criminal case or refuse to initiate a criminal case in the event of receiving information about crimes against the life, health or sexual freedom of children, including sexual intercourse with a person under the age of sixteen or satisfaction of sexual needs in an unnatural way or indecent acts against him, involving a minor as an executor of acts of a pornographic nature, pimping with the involvement of a minor, organizing brothels, they shall notify the Commissioner for the Rights of the Child in writing **within three days**".

Analyzing the above norm, the law stipulates that any investigator who initiates a criminal case related to crimes conditionally referred to as crimes against children is obligated to notify the Commissioner for Children's Rights. However, this obligation is not specified in any provision of the Criminal Procedure Code, even by reference. Therefore, we believe that any rule, obligation, or right regarding the investigator's authority, immunity, procedural independence, or their guarantees should be directly and explicitly stated in the procedural legislation. Otherwise, we believe that the goal of codifying procedural legislation will not be achieved, and moreover, these rights may not be realized or may be delayed in implementation.

Currently, there are several procedural norms guaranteeing the procedural independence of the investigator, which mainly relate to the investigative and procedural actions carried out by the investigator in a criminal case.

In legal literature, the procedural independence of the investigator is explained by the fact that the investigator's right to appeal to a higher prosecutor is established regarding the prosecutor's procedural authority to overturn the decision or action made by the investigator².

However, in our opinion, these views have a narrow meaning, as most of the rules stipulated in the Criminal Procedure Code provide for the authority to establish procedural

² Sumin A.A. Current issues in ensuring legality at pre-trial stages of criminal proceedings. Moscow: Moscow University of the Ministry of Internal Affairs of Russia, 2013.

regulations, and these rules also apply to the investigator. In other words, the investigator is considered the person most responsible for conducting the investigation in a criminal case and therefore independently determines any investigative and procedural actions based on the investigative situation that arises in these processes. Thus, procedural independence implies not only the normative protection related to the validity of decisions made by the investigator but also the independence of their participation in this process.

According to S.B. Rossinskiy and D.B. Bazarova, procedural independence should not only consist of procedural rules but also function in practice. For this, it is necessary to revise the mechanisms for ensuring the investigator's real opportunity to exercise such rights³.

V.M. Bykov⁴, E.I. Voronin⁵, B.Ya. Gavrilov⁶, D.P. Popov⁷, A.P. Gulyayev and several other scholars also note that when carrying out investigative and procedural actions, the investigator's procedural independence is reflected in independently establishing order for the participants in the process, determining the necessary conditions according to their own judgment and discretion, evaluating evidence only based on inner conviction and legal consciousness, and making procedural decisions without mandatory approval from anyone. It is important to enshrine such rules in criminal procedural legislation.

However, another group of scholars, such as R. Jamiyeva, G.Z. Tulaganova, F. Ibratova⁸, N.A. Kolokolov⁹, V.S. Balakshin¹⁰, O.V. Kuzmina¹¹, V.D. Darmayeva¹², I.A. Nasonova, N.A. Morugina¹³ and many other scientists disagree with this view. According to their opinion, the investigator's exercise of authority in relation to other participants on the prosecution side of the process cannot be considered independence. For example, the prosecutor oversees the pre-trial stage of the criminal case, supports the state prosecution during the trial, and so on. For this procedural authority, we cannot recognize the prosecutor as procedurally independent; this is their procedural function. However, the authority to file a protest in courts against a verdict issued illegally or without considering the interests of the parties indicates the prosecutor's independent position in criminal proceedings.

³ Sergey Borisovich Rossinskiy, & Bazarova Dilor Baxadirovna. (2023). PROCEDURAL INDEPENDENCE OF THE INVESTIGATOR: MYTH OF REALITY?. *The American Journal of Political Science Law and Criminology*, 5(06), 44–56. <https://doi.org/10.37547/tajpslc/Volume05Issue06-09>

⁴ Bykov V.M. The investigator as a participant in criminal proceedings on the prosecution side // *Zakonnost*. - 2012. - No. 7 (932). - P. 3-9.

⁵ Voronin E.I. Procedural Status of an Investigator in Internal Affairs Bodies. - Karaganda: Karaganda Higher School of the USSR Ministry of Internal Affairs, 1975. - P.94.

⁶ Gavrilov B.Ya. Redistribution of procedural and supervisory powers between the prosecutor and the head of the investigative body: objective necessity or voluntarism in law? // *Criminal Procedure*. - 2009. - No. 4. - P. 35-44.

⁷ Denis P. Popov The investigator's independence: challenging aspects of the determination of the legal essence and functional purpose // November 2020 Russian investigator 11:19-23

⁸ Zhamieva R., Tulaganova G., Ibratova F Legal issues of procedural independence of the investigator when producing investigative and other procedural actions // *Norwegian Journal of development of the International Science* No 74/2021 PP 24-29

⁹ Kolokolov, N. A. (2014). "The Great Confrontation": Investigator vs. Prosecutor. *Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia*, (10).

¹⁰ Balakshin, V. S. (2011). Independent-Dependent Investigator. *Legality*, (10), 29.

¹¹ Kuzmina, O. V. (2010). Investigator as the subject of appealing court decisions at the pre-trial stage of criminal proceedings. *Criminal Law*, (3), 85-89.

¹² Darmayeva V.D. Investigator in Criminal Proceedings. Moscow: Moscow Psychological and Social University, 2007. - 128 p.

¹³ Nasonova I.A., Morugina N.A. Head of the Investigative Body and Investigator: Problems of Interaction and Procedural Independence // *Bulletin of the Voronezh Institute of the Ministry of Internal Affairs of Russia*. - 2016. - No. 2. - P. 7-15.

In this regard, if we look at the national criminal process, we have already mentioned above that the procedural status of an investigator as an official performing certain functions is not defined in Article 35 of the Criminal Procedure Code. However, in subsequent sections:

- the right to independently make all decisions regarding the direction of the investigation and the conduct of investigative actions, to appeal to a higher prosecutor in case of disagreement with issues requiring the prosecutor's permission (Article 36 of the Criminal Procedure Code), and similarly, the right to appeal to the prosecutor if the same relationship arises with the head of the investigative department (Article 37 of the Criminal Procedure Code);

- independently resolve the issue of self-recusal or recusal of certain other participants in the process (Article 80 of the Criminal Procedure Code);

- independently identify and record evidence, and determine auxiliary methods in this process (Article 91 of the Criminal Procedure Code);

- authority to record a participant's refusal to sign the protocol with their own handwriting and signature (Article 93 of the Criminal Procedure Code);

- independently determine the place, time, and conditions for conducting investigative actions (with certain exceptions) (Articles 96-212 of the Criminal Procedure Code);

- when applying and implementing procedural restrictions related to detention (Criminal Procedure Code 221-226), limiting the meeting time to 2 hours during detention (Criminal Procedure Code 230), allowing a detained person to meet with relatives or other law enforcement officers during detention (Criminal Procedure Code 230);

- independently apply certain preventive measures (Article 240 of the Criminal Procedure Code), determine the direction for applying other types of procedural coercive measures, and submit appropriate initiatives to the prosecutor and relevant court in the form of a submission or petition (Section 4 of the Criminal Procedure Code);

- apply to the court or relevant authority to impose a fine on a person who violates order during an investigative action or to recover money from an auxiliary participant (Article 274 of the Criminal Procedure Code);

- independently recognize the civil plaintiff in the case (Article 277 of the Criminal Procedure Code), apply to the court to ensure the execution of part of the damages awarded in relation to the civil claim by seizing property belonging to the defendant or recognized as legalized (Article 290 of the Criminal Procedure Code);

- independently determining the value and degree of depreciation of property during seizure (Articles 291-293 of the Criminal Procedure Code);

- rewarding a person who actively participated in the prevention or detection of a crime (Article 300 of the Criminal Procedure Code);

- determining the amount of damage caused to a rehabilitated person (Article 306 of the Criminal Procedure Code);

- initiating or dismissing a criminal case (Articles 322, 333 of the Criminal Procedure Code), taking measures in cases involving actions of individuals that entail any liability other than criminal (for example: disciplinary, administrative, etc. Article 334 of the Criminal Procedure Code);

- involving the public in the case (Article 349 of the Criminal Procedure Code), prohibiting the disclosure of the case in whole or in part (Article 353 of the Criminal Procedure Code);

- determining the direction of work as the head of the investigative group (Article 355 of the Criminal Procedure Code), changing, terminating, or supplementing charges (Article 362 of the Criminal Procedure Code), suspending the investigation (Article 364 of the Criminal Procedure Code), declaring a wanted notice (Article 365 of the Criminal Procedure Code), resuming the investigation (Article 371 of the Criminal Procedure Code), deciding on the sufficiency of evidence in a criminal case and referring it to court (Articles 375, 388 of the Criminal Procedure Code), setting a specific period for reviewing the case (Article 376 of the Criminal Procedure Code);

- considering or rejecting received petitions (Article 377 of the Criminal Procedure Code), drawing up an indictment (Article 380 of the Criminal Procedure Code), determining the necessity to ensure the safety of case participants and taking the required measures (Articles 380, 550 of the Criminal Procedure Code);

- determining the need for specialist assistance in the case and resolving issues of payment for their participation at the state's expense (Article 554 of the Criminal Procedure Code), independently determining measures for the protection of minors (Article 559 of the Criminal Procedure Code);

It is impossible to deny the investigator's procedural independence in issuing preliminary conclusions on plea agreements, establishing or rejecting necessary conditions (Chapter ⁶²¹ of the Criminal Procedure Code), and exercising many other relatively minor powers. This is because the law allows the investigator to exercise these enumerated powers not based on someone's instructions, but on their inner conviction and legal consciousness.

Therefore, it is impossible to agree with the opinions of the aforementioned second group of scholars, since the socially beneficial aspect of procedural independence lies in the fact that, according to the historical aspects substantiated in the first chapter of the dissertation, it is not a means of implementing the state's political ideology, but rather a way of establishing personal responsibility in ensuring justice and thereby entrusting the prevention of illegal activities to legal consciousness and inner conviction.

Since the independence of the investigator in the above-mentioned procedural functions cannot be denied, we believe that legally establishing it as a principle will serve to further enhance the guarantee of the investigator's procedural independence. In particular, many scholars have put forward these opinions and proposals in this regard, but there were also scholars who rejected them due to concerns that guaranteeing the investigator's procedural independence at the principle level would require amending dozens of articles in criminal procedure legislation.

However, since the investigator performs the most crucial functions and tasks in criminal proceedings, determining their status and role is of paramount importance. Therefore, in our opinion, the independence of the investigator is a broader concept than "general conditions" and holds priority significance in criminal proceedings.

Conducting a preliminary investigation without observing this rule also has a severe negative impact on fulfilling the objectives of criminal procedure legislation. The principles of

criminal procedure embody general rules that serve as the foundation for implementation in this field. As the activities in this area are carried out in the manner prescribed by law, the fundamental rules (principles) that form the basis of these activities should also be reinforced.

Based on this, we believe that the issue of the investigator's independence can be equated to a principle of criminal proceedings and should be enshrined at the legislative level.

At the same time, in response to the concerns of scholars who disagree with these views and worry that establishing the procedural independence of the investigator as a principle might conflict with other norms of the code, we can offer a point-by-point interpretation of the norms reflecting the investigator's procedural independence as a rebuttal. Furthermore, we believe that including this principle in the Code will not create inconsistencies with other articles.

83% of our respondents who participated in the survey conducted for this research also agreed with our opinion that including the procedural independence of the investigator in the code as a principle would only serve to enhance the effectiveness of work in this area¹⁴.

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