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COMPLAINING ABOUT PROCEDURAL ACTIONS AND DECISIONS IN CRIMINAL PROCEEDINGS

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ABSTRACT

This article talks about the normative basis of the rights of citizens in relation to appeals, the complaints that the parties may make about procedural actions and decisions in court proceedings, including criminal proceedings, and its legal basis. Also, the opinions and views of experts in the field regarding the right of interested parties to appeal against procedural actions and decisions in various court instances and the interpretation of this right are analyzed.

KEYWORDS

Procedural action, complaint, state body, parties, court of first instance, interested parties, preventive measure, detention in absentia, investigation department, original copy, subject of appeal.

INTRODUCTION

A legislative document, which has high legal force in the protection of the rights and freedoms of citizens, the rights and legitimate interests of legal entities, directly applies to the entire territory of the country, is the Constitution of the Republic of Uzbekistan.

In the third part of Article 8 of the law of the Republic of Uzbekistan "on regulatory legal acts", it is established that the laws of the Republic of Uzbekistan

and other regulatory legal acts are adopted on the basis of the Constitution of the Republic of Uzbekistan and for its enforcement, and cannot contradict its norms and principles.

According to Article 40 of our Constitution, everyone has the right, directly with himself and others, to apply to state bodies and organizations, Citizens' self-government bodies, officials or representatives of the

people with applications, proposals and complaints. Applications, proposals and complaints are subject to consideration in the manner and within the deadlines established by law.

Also, Article 55 of our Constitution enshrines the following on guarantees of the rights and freedoms of Man and citizen.

Everyone has the right to defend their rights and freedoms in all ways that are not prohibited by law.

Everyone is guaranteed the right to defend their rights and freedoms through the court, to appeal to the court against illegal decisions, actions and inaction of state bodies and other organizations, their officials.

Everyone is guaranteed the right to have his case heard by a competent, independent and impartial court within the deadlines established by law in order to restore violated rights and freedoms.

Everyone has the right to apply to international bodies protecting the rights and freedoms of a person in accordance with the legislation and international treaties of the Republic of Uzbekistan, if the state is divided using all domestic means of legal protection.

Everyone is a member of the state bodies or their officials

the role of damage caused by unlawful decisions, actions or inaction has the right to be covered by the state [1].

According to Article 27 of the Criminal Procedure Code of the Republic of Uzbekistan, participants in the proceedings and other persons, as well as representatives of enterprises, institutions and organizations interested in conducting a criminal case, have the right to appeal the procedural action or

decision of the Inquirer, investigator, prosecutor, judge and court in the manner and term prescribed by this code.

The right to appeal to the court is the right by citizens to demand the restoration of their violated rights, freedoms and legitimate interests in judicial order [2].

Criminal-procedural law allows a person's constitutional rights in criminal proceedings to be limited only in the manner prescribed by law in order to protect a person and society from criminal encroachments, but has elevated the right to appeal prosecutive actions and decisions to the level of principle, recognizing unreasonable restrictions on individual rights and the importance of restoring violated rights.

The judicial consideration of Appeals of decisions and actions (inaction) of officials responsible for conducting the case before the court is one of the manifestations of the equality of the parties and the contentious constitutional principle of proceedings in the pre-trial course of the case, indicating the special role of the court in ensuring the rights and freedoms of citizens.

The content of the principle of appeal against procedural action (inaction)s and decisions is manifested in two ways: as ensuring the constitutional rights and freedoms of a person and a citizen, and as ensuring legitimacy in the process of pre-trial proceedings and judicial proceedings [3].

A means of legal action to restore violated rights and freedoms is a complaint. The complaint always contains information about the violated rights of the citizen or other persons who have applied [4].

In the conduct of a particular criminal case, measures of coercion are used that limit the constitutional rights

and freedoms of citizens to varying degrees, and without the application of these measures, the criterion of Justice cannot be achieved. The penalties imposed for the committed crime severely limit the natural rights of a person.

President of The Republic of Uzbekistan Sh.M. Mirziyoyev "...the procedure for filing a lawsuit against the decision of the prosecutor is introduced. Through this, it is possible to ensure balance, that is, the principles of restraint, in the process of inquiry and preliminary investigation. Such a significant change is also being introduced for the first time in our experience. I believe that the introduction of such an experience, which is valid in developed democratic countries in relation to the appeal of the prosecutor's decision to court, will be a huge step in strengthening the criterion of justice in our lives [5].", with a particular focus on the issue.

According to A.V. Smirnov, the appeal of procedural action (inaction)s and decisions in essence introduces an appellate procedure for verifying the legality and validity of the documents of the bodies of preliminary investigation [6].

In this form of judicial control, we can see some elements of the criminal process of France and Germany, for example, in France, an appeal can be made to the prosecution Chamber of the court of appeal against the decisions of the investigative judge.

A complaint in accordance with Article 5 of the law on appeals of individuals and legal entities of the Republic of Uzbekistan is a statement of a request for the restoration of violated rights, freedoms and the protection of legitimate interests.

S.N. Mamadiev described the complaint as an appeal to eliminate violations of the norm of law due to the

legality and justification of the norm applied or applicable in the process of initiating a criminal case or preliminary investigation, the adoption of a decision involving the subjective rights and legitimate interests of participants in the criminal process, or the implementation of an action(inaction), the

The following forms of illegal restriction of the rights of participants in criminal court proceedings are distinguished: inaction, abuse of the right or exceeding the limit of their own procedural rights by a person [8].

Today, it is appropriate to note that in the process of conducting the case before the court, there is no holistic system that ensures an impartial and truthful review of the complaints of the participants in the criminal process. The reason is that Article 358 of the CPC does not specify the procedure and deadlines for considering this complaint, while recognizing the right to appeal the actions and decisions of the investigator and the prosecutor, limits the possibility of using this right.

Procedural decisions are not only a means of fulfilling the obligations of officials and state bodies, but also a condition for the implementation of the procedural rights and obligations of participants in the proceedings. At the same time, a criminal-procedural decision is an act of application of the guidelines of criminal-procedural legislation, for this reason it has independent legal content and significance as a document for the implementation of these legislative guidelines [9].

In pre-trial proceedings, decisions are those aimed at the inquiry body, investigator, prosecutor in a criminal case under investigation, making a criminal case, refusing to initiate or initiate a criminal case, performing investigative actions, criminalizing, using precautions or coercion, suspending or ending

proceedings in a criminal case, or sending materials of the case for review and resolution, etc [7]. There are different views in the scientific literature on the types of procedural decisions.

For example, A. Lupinskaya distinguished the initial, intermediate and final types of procedural decisions, and in this it was taken at what stage of the proceedings as the main criterion that the decision was made and the effect on further proceedings.

Initial decisions give the right to initiate proceedings or its separate stage (decision to initiate a criminal case). Intermediate decisions are made in the process of proceedings within the framework of one stage and will mainly be associated with the recognition of the processual state of the individual or with a precaution, the conduct of processual actions. Final decisions complete the proceedings at this stage [10].

A decision is a legal tool for performing a social task. Judgment is usually referred to as the most important document of justice when it comes to fulfilling the purpose of criminal justice proceedings. However, the legality and validity of the sentence largely depends on the legality and validity of decisions made on various issues in the process of conducting the case before the court and in the Proceedings of the court. With the resolution of a specific legal issue, the Inquirer, the investigator, the prosecutor, the court guard public order, state security, the honor and dignity of the individual, the rights and freedoms of man and citizen [11].

S.N. Mamadiev divided all decisions and procedural actions taken in pre-trial proceedings into types on recognition of the legal status of the individual, determining the direction of inquiry and preliminary investigation, on the implementation of investigative actions and other procedural actions, on precautions,

on other coercive measures, ensuring the restoration and implementation of rights and legitimate interests, providing the process of proving, ensuring the effectiveness [7].

Competent subjects (inquirer, investigator, prosecutor) who have made decisions to be made in the criminal process; can be classified by the content of the issue to be resolved in the decision (recognition as material evidence, appointment of an examination), by its functional function (initiating a criminal case, termination of a criminal case, by legal force (decisions that have entered into).

In western countries, it is generally accepted to divide decisions into administrative and jurisdictional forms, and this classification eliminates the dispute about which decisions can or cannot be appealed. In particular, administrative decisions are understood as decisions that cannot be appealed due to the fact that they have a technical nature over them or are aimed at collecting evidence. Jurisdictional decisions will resolve a particular procedural dispute, with a limitation on constitutional rights or a limitation on the right to a fair trial.

According to S. Mamadiev, the subject of complaint is inquiry, procedural decisions and actions of the investigating authorities and the prosecutor, which, in the opinion of the persons involved in the case, violate or endanger their rights, as well as procedural decisions and actions provided for by law, as well as inaction expressed in the non – fulfillment of procedural obligations provided for by law [7].

However, in this position, it cannot be considered justified that the subject of complaint is limited to procedural decisions and actions (inaction) that violate or endanger the rights of persons participating in the case, the reason is that as a result of procedural

activity, the rights of other persons who are not involved as a participant in the proceedings can also be limited. In addition, the subject of the complaint includes only constitutional rights, not any rights.

One of the biggest problems in the implementation of the right to appeal to the court is that applicants cannot always distinguish criminal-procedural relations from civil, administrative, disciplinary ones. A complaint must arise precisely from a criminal-procedural relationship.

It should be noted that even among supporters of the introduction of judicial control, in the process of conducting the case before the court, there was no unanimous opinion on the subject of the complaint regarding the procedural decisions and procedural actions (inaction) of the bodies responsible for conducting the case before the court. We can conditionally divide these points into 3 groups.

Supporters of the first approach came to the conclusion that it is impossible to strictly limit the right to appeal, based on the fact that in accordance with the generally accepted documents of the Constitution and international law, each person is guaranteed the right to defend their rights and freedoms through the court [13].

For example, the scope of decisions and actions that can be appealed in the CPC of the Russian Federation is not limited, but in most cases the decisions of the Constitutional Court give direction to determine the scope in question.

An advocate of this view was A. Babenko, V. Yablokov, A. Piyuk has proposed further expansion of the subject of judicial review. A. Piyuk proposed to include in these grounds not only the main actions and decisions of the preliminary investigation, but also the right to appeal

against the rejection of the defense's request for an investigative action aimed at gathering evidence [14].

Proponents of the second approach have proposed to clearly define decisions and lists that can be appealed to the court in law in order to prevent an unreasonably wide interpretation of the subject of judicial control, to regulate the use of the right to appeal. This eliminates the possibility of artificially stretching the duration of the investigation by making unreasonable complaints about any decisions and actions of the official charged with a quick and complete investigation [15].

Opponents of the expansion of the subject of judicial control cite the fact that judicial control can extend to the powers of the bodies responsible for conducting the case before the court, that is, the court can influence the size and direction of conducting the case before the court, the ultimate outcome of the case as a basis against the expansion of the subject of judicial

In our opinion, the third i.e. the approach to defining the subject of judicial control only by acts and decisions limiting constitutional rights and freedoms is logical [16].

The subject of complaints against the bodies and officials responsible for conducting the case before the court, the bodies responsible for conducting the case before the court are procedural decisions and procedural actions (inaction) of officials, participants in the proceedings and other persons violating their constitutional rights and freedoms.

However, there is consensus on the need for decisions and actions that prevent or restrict an individual from achieving justice to be the subject of a complaint, since the right to justice is a legal means of securing all other rights.

Many professional scholars believe that termination of a criminal case by an inquirer and investigator without rehabilitative grounds violates the rule that the case of each person accused of committing a crime, as defined in Article 26 of the Constitution, Article 23 of the CPC, is legally, publicly considered in court and that he cannot be considered guilty until his guilt is established. The non-availability of procedural guarantees in court proceedings in the process of termination of a criminal case at the time of proceeding before the court provides the basis for questioning the legality of these decisions.

However, in the court's decision on the result of hearing the appeal to the decision to initiate a criminal case, it cannot be ruled out that the record of the validity of the decision to initiate a criminal case is inconsistent with the function of the Justice, and in this there are elements of the accusative function.

In practice, a violation of the right to protection is precisely associated with a real non-provision of the right to defense, a restriction on the right of the suspect and the accused to meet with the defender. The timely provision of the right to protection and its restoration in violation, the Real defense of the suspect and the defendant, affects the outcome of the proceedings ultimately, preventing the division of torture or other cruel treatment towards him. The right of a defender to meet a person under his protection is an important element of the right of protection, and the administration of temporary detention centers and investigative detention centers can appeal to the defender that he refused to give a meeting with a person under his protection, however, sometimes there are cases when a preventive measure in the manner of imprisonment.

Protection is made up of many elements related to each other, and the fact that the Real possibility of

meeting the protector in a secluded way is not created can prevent the defense from being implemented.

In accordance with Section 234 (5) of the CPC, the administration of the place where the detainees will be held if necessary ensures the free departure of freed persons to the place of residence; at their request, the detainees will provide a reference about their time at the place of detention.

Chapter 3 of the law of the Republic of Uzbekistan "on detention in the course of criminal proceedings" is called the rights of those detained and imprisoned, as well as guarantees for the provision of these rights, however, this chapter does not indicate the obligations of the administration of the places of detention of those detained and imprisoned. In accordance with Section 15 (2) of the law, the provision of the regime in places of detention is entrusted to the administration, as well as employees of places of detention, who are liable in accordance with the procedure established by law for failure or due failure to perform their service duties. However, it has not been established that ensuring the rights of those held and those imprisoned is the obligation of the administration of the places of detention of those held and those imprisoned.

The right to appeal a decision on the termination of a criminal case is held by a suspect, defendant, defense attorney, victim, civil plaintiff, civil defendant and their representatives, as well as a representative of the same Enterprise, Institution, Organization or organization if the case is triggered by a message from an Enterprise, Institution, Organization or citizen.

However, this norm deprives persons who are not involved as participants in the Proceedings of the right to appeal. It is known that the rights of participants in the process are clearly enshrined in the CPC. In practice, cases of appeal by persons who are not

involved as a participant in the proceedings, but who have been denied criminal proceedings under Article 84 of the CPC in relation to him or whose criminal case has been terminated, searched in residential premises, are more common. Z.F. Inogomdjonova explained that the concept of "participants in the process and others" is abstract, the procedure and consequences of complaining or pleading are not reflected in the norms of the law [17].

In accordance with Article 18 of the law "on detention in the course of criminal proceedings", it has the right to apply with petitions and complaints, either in person or through a defender or a legal representative, on the issue of the legality and validity of their detention and violation of their rights, freedoms and legitimate interests.

Along with the suspect and the defendant, it is necessary that their right to appeal to the court and the right to participate in the hearing are guaranteed because the decision or action also affects the rights and interests of the victim and the civil plaintiff (for example, on the issue of canceling or changing the precautionary measure, canceling the property's the reason is, a complaint made to decisions and actions by the accused, suspect and their defenders can, to one degree or another, affect the interests of the victim.

There are different views on the relevance of the right to appeal in criminal proceedings. While some scholars believe that only participants in the process have this right, other scholars believe that any person whose rights and interests are violated has this right. However, two important cases will be the main criteria when solving this issue. Firstly, the restriction of the right to file a complaint with certain categories of persons violates the rule that each person, established in Article 35 of the Constitution, has the right to apply directly with him and others to competent state

bodies, institutions or representatives of the people with applications, proposals and complaints.

The first issue in this, of course, is a clear determination of the duration and form of the complaint. In our opinion, article 27 of the CPC establishes that it is possible to apply to the court electronically, expanding the possibility of appeal to the court. At the same time, it is wrong not to set the deadline for filing a complaint at all in the CPC. The reason may be that the complaint is not filed on time, leading to the conclusion of the stage of holding the case before the court, and that the complaint is filed directly in the process of viewing the case in content even after the verdict has been reached. The procedure and deadlines for complaints to the parties must be explained by the authorities responsible for conducting the case before the court. It allows complaints to be filed and heard in a timely manner, to limit individual rights of illegal decisions and actions, and to prevent negative consequences.

In the complaint, the name of the body responsible for conducting the case before the court, the time and place of the action of the official or the time of the decision, the violated rights of the applicant and the absence of grounds for confirming the arguments in question may prevent the appointment of a court session and the involvement of the defendant,

Also, this issue requires the determination of the issue of whether a person has the right to appeal or not before the start of the court session. The reason is that the judge, in the process of appointing the complaint to be heard in court, it is necessary that the decision or action affects the rights and interests of the individual, checking the presence of powers if he is participating as a representative. It is necessary that the question of whether the complaint was entered into proceedings and appointed for consideration at the hearing is reflected in the judge's verdict in the procedural form,

and that the ruling indicates the acceptance of the complaint into proceedings, the time and place of consideration of the complaint, notification of the applicant and officials of the body responsible for at the same time, in the ruling, the judge may impose on the officials of the body responsible for conducting the case before the court the obligation to provide the necessary materials related to the complaint, to call other persons.

In the Russian Federation, the judge considers the complaint at a hearing, in the presence of the applicant, his representative, legal representative or persons who influence the decision or interests of the complainant, the prosecutor, the investigator, the head of the investigative body (Article 125 of CPC) [18].

In our opinion, it is advisable to consider a complaint at a hearing, in which the principles of justice are fully valid, the complaint will be able to be studied in every possible way and objectively.

At the hearing, the court announces what kind of complaint will be heard, based on the principle of dispute of the parties, the author of the complaint, the official who made the decision on which the appeal is made or committed the action (inaction) on which it is appealed. The parties must prove the circumstances under which they are citing their demands and objections.

Like all court documents, it is necessary that the court's ruling, legal and justified. When and where the ruling was issued at the entrance, the name of the court issuing the ruling, the presiding officer, the clerk of the court, the parties, their representatives, the translator, the surname, name of the author of the complaint, the sheriff, the name of the body responsible for conducting the case before the court, the name of the decision being appealed and the date.

The failure to clearly define the mechanism for the enforcement of the judgment of the court prevents the restoration of the rights of the individual in practice. Therefore, it is necessary for the court to impose obligations on the prosecutor to eliminate violations of the law, to restore violated rights, and to clearly indicate the deadline for the fulfillment of this obligation.

The legal entry into force from the time of the decision of the court on the complaint ensures the immediate restoration of violated rights.

Appeal of procedural actions and decisions processually significant aspects of the right to do:

First of all, it serves as a guarantee of protecting the subjective rights of an individual in the criminal process and preventing their violation by law enforcement officers, since it prevents them from making deliberately illegal decisions, taking illegal actions (inaction).

Secondly, it is carried out by filing a complaint, which is a necessary condition for checking the legality and validity of the actions (inaction) and decisions of the initial investigative bodies and their officials.

Thirdly, it allows you to identify violations committed in the process of criminal proceedings.

Fourth, it makes it possible to eliminate cases of violations of the law and restore the rights of citizens.

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