



RESEARCH ARTICLE

THE NATURE AND DIRECTIONS OF PROSECUTORIAL OVERSIGHT OF COMPLIANCE WITH THE LAW BY PRELIMINARY INVESTIGATION BODIES

Shamsiev Alisher Azamatovich

Manuscript Info

Manuscript History

Received: 14 February 2020

Final Accepted: 16 March 2020

Published: April 2020

Key words:-

Prosecutorial Supervision, Pre-Trial Proceedings, Compliance With Laws

Abstract

The article reveals the essence and features of the implementation of prosecutorial supervision of compliance with the law by the preliminary investigation authorities, examined the forms and features of the supervision of evidence, involving a person in a criminal case as a suspect or accused, as well as at the end of the preliminary investigation.

Copy Right, IJAR, 2020,. All rights reserved.

Introduction:-

The statement of the problem of building a democratic law-governed state and a strong civil society actualizes the increasing requirements for compliance with the law in the activities of law enforcement agencies. Since the rule of law provides for the protection and protection of the rights and interests of a person, society, and the state from crimes by creating conditions for their disclosure, exposing and convicting those responsible with the establishment of guarantees for the realization of individual rights.

International standards for ensuring human rights and freedoms, enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, are reflected in the Constitution of the Republic of Uzbekistan, according to which the observance of such rights and freedoms as - personal inviolability, inviolability of the home, privacy of correspondence and correspondence is guaranteed and etc.

It should be noted that the Constitution of the Republic of Uzbekistan proclaims that "... the highest value is a person, his life, freedom, honor, dignity and other inalienable rights. Democratic rights and freedoms are protected by the Constitution and laws. " The approach to the individual as a social value protected at the highest level, reflected in the Constitution, required the improvement of the criminal procedure legislation and the practice of its application, aimed at preventing various violations in the criminal procedure sphere, which was reflected in the Strategy for Further Development Republic of Uzbekistan. Among the main directions in the Action Strategy, it is pointed out that it is necessary to solve the problems of ensuring detailed regulation in criminal procedure legislation of legal relations during criminal proceedings, as well as accurate and uniform implementation of the law. Moreover, compliance with the law is ensured only if there are legal instruments and criminal procedural institutions that determine the status and relationships between participants in the criminal process, which directly affects the enforcement of the rights and legitimate interests of citizens.

A study of international experience has shown that in the developed countries of the world special attention is paid to the formation and legal regulation of an effective mechanism for ensuring compliance with human rights at the stage of pre-trial criminal proceedings. In this context, a special role is given to the prosecutor's oversight of the implementation of the requirements of the law by bodies involved in the fight against crime.

In accordance with Art. 118 of the Constitution of the Republic of Uzbekistan, the supervision of the accurate and uniform implementation of laws on the territory of our country is carried out by the Prosecutor General of the Republic of Uzbekistan and prosecutors subordinate to him. Thus, prosecutorial oversight is an activity enshrined at the level of the Constitution aimed at ensuring accurate and uniform enforcement of laws by all state and non-state bodies, legal entities and individuals throughout the country. It should be noted that the prosecutor's office exercises its authority independently of any state body, public association and officials, subject only to the law. In essence, prosecutorial oversight, being an institution for responding to any violations of the law, performs the tasks of ensuring the rights and freedoms of citizens, protecting public and state interests and is carried out in the manner and form established by law.

The analysis of the legal basis and practice of organizing procurator supervision of the activities of pre-trial bodies abroad and our country showed that there are problems of a complex nature related to the performance of the functions of preliminary investigation, inquiry and preliminary investigation in criminal cases, as well as supervision of the implementation of laws by the bodies of initial inquiry and preliminary investigation. This shows that the functions, powers of the prosecutor at the stage of pre-trial proceedings and the peculiarities of prosecutor's supervision over the activities of pre-trial investigation bodies are constantly the focus of attention of scientists and practitioners.

In accordance with article 382 of the Code of Criminal Procedure (hereinafter referred to as the Code of Criminal Procedure), the supervision of uniform and accurate compliance with laws in the investigation of criminal cases is carried out by the prosecutor. In the legal literature, the methodology of procurator supervision is defined as a set of methods, i.e. methods, means, techniques of using legal forms of exercise of the powers of prosecutors in order to prevent, detect, eliminate violations of the law, causes and conditions contributing to them.

In our opinion, the features of prosecutorial supervision are as follows:
Carried out only by authorized public prosecutors;

The directions and branches of activity of procurator supervision are determined by the Law of the Republic of Uzbekistan "On the Prosecutor's Office" and other normative and legal acts;

Procurator supervision is exercised by monitoring the implementation of normative and legal acts only within the areas and branches specified by it;

The activities of both State bodies responsible for criminal proceedings and legal and natural persons involved in criminal proceedings may be subject to supervision;

Procurator supervision is carried out in order to ensure the interests of the individual, society and the State.

At the same time, in our opinion, when classifying types and forms of supervision, it is necessary to take into account the peculiarities of the activity of the implementing body - the prosecutor's office, the direction and the branch of prosecutorial supervision. According to the provisions of the Prosecutor's Office Act (new version), there are a number of branches of procurator supervision, and each type of sectoral supervision is not only specifically disclosed in the law, but also reflected in the system of procurator bodies.

Thus, according to Part 1 of Article 4 of the Law "On the Prosecutor's Office," of the nine main areas of activity of the Prosecutor's Office, six are related to the implementation of supervision, and the other three cover other areas of activity.

The main purpose of the procurator supervision of the implementation of laws by the preliminary investigation bodies is to resolve issues related to the degree of compliance of the activities of the preliminary investigation bodies with the requirements of the Criminal Code, the Code of Criminal Procedure and other laws, objectivity of the investigation and ensuring the rights and freedoms of persons involved in criminal proceedings.

In our view, the following forms of supervision of preliminary investigations in criminal cases should be highlighted:

Familiarization and study of the materials of criminal cases;

Hearing information from investigators on the progress of criminal investigations;

Personal participation in the preliminary investigation;

Review and resolution of complaints and applications for decisions and actions of investigators.

In view of the fact that the investigator, in carrying out his or her activities, considers and resolves complaints and complaints of crimes, it is necessary to pay attention to the subject of prosecutorial supervision of this stage of pre-trial proceedings. Thus, the subject of the procurator supervision of the implementation of laws in the conduct of preliminary investigations is the activity of monitoring the accurate and uniform implementation of the norms of criminal procedure legislation establishing the procedure for the adoption, registration, verification and resolution of applications and reports of crimes, as well as the annulment of illegal or unjustified decisions of investigators, the issuance of orders to initiate or refuse to initiate criminal proceedings in cases of detection of violations of the rule of law.

It should be noted that supervision of activities for investigation verification of bodies of preliminary investigation according to Article 27 of the Law "About Prosecutor's Office", Being an integral part of the subject of supervision of the implementation of laws by the authorities responsible for combating crime, Includes the procedure laid down in the legislation for the examination and resolution of applications and reports of crimes, And the legality of decisions taken by the anti-crime authorities. These powers are disclosed by the two sides of the prosecutor's supervision of the preliminary investigation proceedings. Thus, the prosecutor oversees (a) compliance with the requirements of the law on the adoption, consideration and resolution of applications and reports of crimes committed or under preparation; b) full and accurate observance of legality by the authorities of preliminary investigation.

The Prosecutor, while overseeing the decisions taken as a result of the preliminary investigation, carefully checks, studies each material and, if necessary, cancels illegal and unfounded decisions of the investigator, i.e., by cancelling the order to initiate criminal proceedings, refuses to initiate proceedings, cancels the order to refuse to initiate criminal proceedings, and initiates criminal proceedings.

The main activities of the preliminary investigation bodies are carried out through the implementation of the proof process. Procurator supervision of the evidence at the preliminary investigation is carried out in the form of the issuance of sanctions for the conduct of investigative actions, participation in the conduct of various investigative and procedural actions in the case, as well as the personal conduct of investigative actions.

The prosecutor 's supervision of the involvement of a person in a criminal case as a suspect or accused consists of ensuring the precise and correct implementation of the requirements of the law provided for in the detention or involvement of a person in the case as a suspect or accused (arts. 47, 48, 220, 221, 224-227, 359-361 of the Code of Criminal Procedure).

At the same time, the prosecutor 's supervision of the involvement of a person in a criminal case as a suspect or accused has its own characteristics. Their existence is primarily characterized by the application to a person involved in a criminal case as a suspect or accused person of the appropriate procedural status, the existence of procedural rights and obligations resulting therefrom, as well as the possibility of applying State coercive measures and other legal restrictions to them.

On the other hand, legal status of the person changes: it can be subjected to restrictions of such constitutional rights as - personal liberty and inviolability, inviolability of the dwelling, the mystery of telephone negotiations and correspondences. This necessarily requires due process and legality in the conduct of proceedings involving the participation of a person in a case as a suspect or accused. That is why, at this stage, a high level of prosecutorial oversight is required, which ensures that the involvement of a person in a criminal case as a suspect is justified and that violations of personal rights are prevented. Procurator supervision also serves to ensure that the investigator complies with the grounds and procedure for involving a person in a criminal case as an accused under the Code of Criminal Procedure.

Ordering a person to take part in a criminal case as an accused means initiating a criminal prosecution process. In this regard, prosecutorial supervision should aim at organizing and ensuring that the findings on the existence of the criminal act and the commission of the act by the person concerned are based on sufficient evidence to substantiate the findings. In addition, evidence must be collected, verified and evaluated in accordance with the law. All doubts about the guilt of a person in a case must be eliminated, that is, in order to involve a person in a criminal case, all elements of the offence must be established as an accused, and the fact that the person committed the crime must be established by the evidence collected in the case.

The main task of the prosecutor's supervision of the involvement of a person in a criminal case as an accused is to ensure that this order is issued only after the evidence confirming the guilt of the person for the commission of the crime has been collected. When overseeing the involvement of a person as an accused, the prosecutor must be guided by the requirements of article 2 of the Code of Criminal Procedure, according to which anyone who has committed a crime must be subjected to fair punishment and no innocent person has been prosecuted and convicted.

The Prosecutor should focus on preventing the pre-trial investigation authorities from using a person as an accused if there is insufficient evidence of a person's guilt.

A study of criminal investigation practice has shown that investigators, when ordering a person to take part in a case as accused, send a copy to the prosecutor responsible for supervision. It should be noted that the Code of Criminal Procedure does not contain such a requirement, but the established practice can be adopted as a way to ensure the rights and legitimate interests of persons involved in the case as accused, as well as the legality of bringing a person as accused at a preliminary investigation. The Prosecutor, through the examination of the order to involve a person in a criminal case as an accused, oversees the prosecution. Thus, the prosecutor, as the guardian of the rule of law and responsible for ensuring the rights of the suspect and the accused, within the limits of his or her powers, directly exercises the supervisory function specified in the Code of Criminal Procedure and other normative and legal acts for the accurate and full observance of the law by the preliminary investigation authorities.

Another of the main directions of procurator supervision of the activities of the preliminary investigation bodies is the organization, monitoring and ensuring full compliance with the requirements of procedural legislation at the end of the preliminary investigation.

In the course of implementation of supervision of preliminary investigation the prosecutor has to pay special attention to completeness, comprehensiveness and objectivity of all collected proofs confirming guilt of the person or excluding proceedings, to carrying out and registration according to requirements of the Code of Criminal Procedure of the investigative actions directed to check and assessment of proofs, security of the rights and legitimate interests of participants of process, to formulation of conclusions of preliminary investigation. The features of the procurator supervision of the completion of the preliminary investigation include the verification of the investigator's enjoyment of the rights and legitimate interests of the participants in the process. Thus, the prosecutor oversees how the investigator notifies the participants of the proceedings about the completion of the preliminary investigation, explains their rights to them at this stage and familiarizes the parties concerned with the case file, draws up an indictment or other procedural act marking the end of the preliminary investigation.

On the basis of the above, it should be noted that the supervision of the activities of the preliminary investigation bodies is one of the main activities of the Public Prosecutor's Office and is aimed at carrying out the tasks of ensuring respect for the rule of law in the conduct of preliminary investigations.

The Prosecutor is an official who occupies an important and specific place in the public administration mechanism, responsible for the exercise of one of the main functions enshrined in the theory of criminal procedure - the function of the prosecution. If the prosecutor finds an incorrect, unfounded or unlawful decision of the investigator during the supervision of the investigation, he or she shall make a decision on the annulment of this procedural act and declare the decision of the investigator null and void.

As a conclusion, the procurator supervision of the implementation of the law by the preliminary investigation bodies, as a sub-section of the supervision of the precise and uniform application of the law by the anti-crime authorities, is an activity aimed at ensuring the legality of decisions and actions of the investigator from the stage of consideration and resolution of statements and reports of crime to the end of the preliminary investigation.

Literature:-

1. Collection of international documents. - T., 2003. - C.7-102
2. Constitution of the Republic of Uzbekistan. - T., 2018. Article 13
3. The decree of the President of the Republic of Uzbekistan "About the strategy of actions for further development of the Republic of Uzbekistan" of February 7, 2017//the Collection of the legislation of the Republic of Uzbekistan, 2017, No. 6, Article 70, No. 20, Article 354
4. Scientific and practical commentary to the Code of Criminal Procedure of the Russian Federation/Under Society. V.M.Lebedeva, V.P.Bozheva - 2nd ed. - M.: Spark, 2004. - S. 314-315.,
5. Boltoshev E.D. Functions of the prosecutor in the pre-trial stages of criminal proceedings: Avtoref.dis. edging.yurid. sciences. – M, 2002. 24 pages,
6. Krukov V.F. Legal status of prosecutor in criminal prosecution (pre-trial and judicial proceedings). Avtoref. yew. dokt. Legal - M., 2012. 49 p.
7. Olisov R. Yu Ratio of Procedural Independence of Investigator and Prosecutor 's Supervision in the Domestic Pre-Trial Proceedings Autoref. yew. edging.yurid. sciences. M., 2006. 21 p.
8. Alimov F.H. Prosecutor 's supervision of preliminary investigation. Avtoref. yew. Cand.yurid.nauk -T., 2009. - 21 p.
9. Pylatov B.H. Theoretical and practical problems and ways to improve the legislative regulation of the participation of the prosecutor in criminal cases in the courts: Autoref.. dokt. yurid. Sciences. - Tashkent, 2003;
10. Bushkovskaya E.N. Supervision of the prosecutor over the procedural activities of the investigator and the investigator in pre-trial proceedings. Avtoref. Dis.cand.yurid.nauk - M., 2011. - 22 p.
11. Krylova I. B. Prosecutor 's supervision of observance of human and civil rights and freedoms during the preliminary investigation of Autoref. yew. edging.yurid. sciences. M., 2002. - 24 p.;
12. Assembly of Legislation of the Republic of Uzbekistan. - 2014. - № 32. - St. 395; 2016, No. 32 (387).