



THEORETICAL ASPECTS OF THE GROUNDS FOR RETURNING A CASE FOR ADDITIONAL INVESTIGATION BY THE PROSECUTOR

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Abstract: This article thoroughly examines the circumstances that should be considered when a prosecutor reviews criminal cases submitted with an indictment by inquiry and preliminary investigation bodies at the pre-trial stage. It also explores the grounds for the prosecutor to return a criminal case for additional investigation and the types of such grounds. The study analyzes the extent to which cases of returning files for additional investigation due to serious violations of criminal procedural law are enshrined in legislation. Additionally, it presents scientifically substantiated proposals and recommendations regarding what instances should be recognized as serious violations of the law.

Keywords: inquiry, preliminary investigation, prosecutor, additional investigation, inquiry officer, investigator, court, criminal case.

The concept of returning a criminal case for additional investigation is one of the important stages in criminal proceedings, the main purpose of which is to ensure the need for a repeated investigation due to insufficient evidence collected in the case or incomplete observance of legal grounds.

The essence of returning the case for additional investigation is that if the evidence obtained in the criminal case is insufficient or there are errors and violations of the law committed during the investigation, this case is returned by the court, which creates the basis for a correct and fair decision with a repeated investigation. During the additional investigation, new evidence may be collected in the case or errors made during the previous investigation may be corrected.

Currently, the grounds for the prosecutor's return of a criminal case to the investigator for further investigation are not sufficiently clearly defined in criminal procedure legislation.

To clarify the grounds for returning a criminal case to the investigator for further investigation, it is first necessary to define the content of the concept of "basis."

In particular, V.I. Vlasov defines the grounds for referring a criminal case for additional investigation as signs, circumstances established by law, "in the presence of which certain legal conclusions must be drawn in the case"[1].

However, the author did not specify which specific signs and circumstances expressed in the law he was referring to, but emphasized an important aspect - that certain legal conclusions should be drawn in the case. At the same time, it remains unclear what the scientist meant by legal conclusions and what their consequences will be.

When determining the grounds, we consider it important to take into account that they can relate to both criminal and criminal procedure legislation, and that they must prevent the court from making a final decision on the case. Moreover, to eliminate violations of the law, one should not limit oneself to investigative actions, since it should be taken into account that

they can also be eliminated through procedural actions. Thus, by the grounds for returning a criminal case by the prosecutor to the investigator, we understand the violations of criminal and criminal procedure legislation committed by the investigator, without eliminating which it is impossible to send the criminal case to court and issue a final procedural decision on the case by the court.

Although the grounds in scientific research are divided into specific types, the current criminal procedure legislation does not define the grounds for returning a criminal case for additional investigation.

S.P. Shcherba and D.I. Erejipaliev "among the grounds for the prosecutor's return of a criminal case to the investigator, along with the violation of the rights of the participants in the criminal process and the incompleteness of the investigation, also highlight violations of the law that lead to the recognition of evidence as inadmissible"[2].

According to the degree of prevalence of grounds for returning criminal cases, A.M. Bagmet and N.V. Osmanova "first of all, they focus on errors made in the prosecution and personal data of the accused, and then emphasize the incompleteness of the conducted investigation. And in the third place, they highlight common errors, which include both violations of criminal procedure law and technical errors"[3].

According to O.V. Khimicheva, "the legislator, due to the status of the prosecutor as a supervisory body overseeing the procedural activities of preliminary investigation bodies responsible for the legality of criminal prosecution, did not indicate a list of grounds on which the prosecutor has the right to refer a criminal case for additional investigation." Therefore, the prosecutor has the right to return the criminal case to the investigator for further investigation in any case where, in his opinion, the identified violations prevent the further development of the criminal case and cannot be eliminated by him.

M. N. Pereverzev concluded that "depending on the specific circumstances of the case, it is impossible to compile a complete list of specific grounds for returning criminal cases for additional investigation"[5].

L.D. Kalinkina, expressing a somewhat different opinion, believes that "the establishment in the Criminal Procedure Code of the grounds for the prosecutor's return of a criminal case for additional investigation allows prosecutors to have criteria for making lawful and reasoned decisions on the return of criminal cases for additional investigation, excluding cases of making unjustified prosecutorial decisions, without allowing red tape in criminal cases"[6]. We also agree with the opinion of this author that the establishment by the prosecutor of the grounds for returning a criminal case for additional investigation will help prevent subjective approaches to the case and balance the relationship between the prosecutor and the investigator.

According to the results of a survey conducted among investigators, 85% of respondents indicated the need to include in the Criminal Procedure Code of the Republic of Uzbekistan an article defining the specific grounds for returning a criminal case for conducting an additional investigation. 60% of prosecutors supervising preliminary investigation bodies stated that the Criminal Procedure Code requires the prosecutor to indicate specific grounds for returning a criminal case for further investigation, while 40% of prosecutors believe there is no need to establish these grounds in the law. 70% of the prosecutor's office employees who participated in the survey reported difficulties in making a decision on returning a criminal case for further investigation due to the absence of grounds established by law.

In the course of the study, it is necessary to study in more detail the grounds indicated by prosecutors when returning criminal cases for additional investigation. In our opinion, special attention should be paid to such concepts as serious violations of the law, changing the scope of the charges or the qualification of the actions of the accused, incompleteness of the investigation.

In the current criminal procedure law, serious violations are mentioned only in relation to the judicial stage. Nevertheless, prosecutors actively use the concept of "serious violations" in their decisions on returning a criminal case to the investigator for further investigation.

Article 488 of the Criminal Procedure Code defines serious violations of criminal procedure law as follows: "violations that deprive or restrict the rights of participants in the process guaranteed by law, or otherwise interfere with the court's comprehensive consideration of the case and affect or may affect the issuance of a lawful, reasoned, and just decision"[7].

These violations relate to the judicial stage. At the same time, only three out of ten violations relate to the pre-trial stage of the case:

- 1) "after the completion of the inquiry or preliminary investigation, the accused was not familiarized with all the case materials;
- 2) if, by law, the participation of a defense attorney or legal representative is mandatory, the case was investigated without their participation;
- 3) the inquiry, preliminary investigation, and court proceedings were conducted in the presence of circumstances precluding the conduct of the case"[8].

Considering that the concept of serious violations in pre-trial proceedings is not defined, it is fundamentally important to determine which violations are serious in the law.

According to E.I. Skorodelova, "a serious violation of criminal procedure law should not be understood only as a violation of the provisions of a normative legal act - a law." Non-compliance with the norms of subordinate normative legal acts containing criminal procedure norms should also be considered a serious violation of criminal procedure law. The criterion for recognizing a violation as serious is whether the committed violations influenced or could influence procedural decisions made in criminal cases[9].

Based on the requirements of Article 345 of the Criminal Procedure Code of the RSFSR of 1960, M.N. Pereverzev distinguished the following criteria for determining the severity of procedural offenses:

- "restriction or deprivation of the rights of participants in the process";
- restriction or deprivation of the rights of participants in the process who obstruct the comprehensive consideration of the criminal case;
- circumstances that influenced or could have influenced the issuance of a lawful and justified verdict"[10].

L.A. Voskobitova understands the criterion of materiality of procedural violations as a feature that allows one to assess the violation of any requirement of the Criminal Procedure Code by any means and give a clear answer about the cancellation or non-annulment of the sentence issued with such a violation[11].

In legal literature, it is customary to distinguish between conditional and unconditional grounds for serious violations of criminal procedure law.

Conditional grounds are defined as offenses whose seriousness depends on the circumstances of the specific criminal case, and the degree of their significance is determined by the court.

Unconditional grounds are clearly stated violations of the law, which in any case lead to the annulment of the sentence.

According to L.A. Voskobitova, "the division of offenses into conditional and unconditional types is questionable"[12].

In the modern scientific world, various opinions are expressed about which violations are conditional and unconditional grounds for returning a criminal case for additional investigation.

According to E.N. Alimamedov, "the absence or incorrect indication of the accused's personal data in the indictment is an unconditional basis for the prosecutor to return the criminal case for further investigation"[13].

Although regulatory legal acts do not specify which grounds are conditional and which are unconditional, prosecutors, when returning criminal cases for additional investigation, rely on the conditionality and unconditionality of the grounds.

It should be noted that V.I. Vlasov identified the following violations of criminal procedure law, which are always unconditionally important and should be enshrined in legislation:

- "violation of the accused's rights when appointing and conducting an expert examination;
- absence of a defense attorney in the preliminary investigation in cases where their participation is mandatory by law;
- failure to familiarize the accused with the materials of the criminal case;
- violation of the rule of jurisdiction when conducting a full investigation of criminal cases subject to mandatory preliminary investigation by the inquiry bodies;
- absence of an interpreter in cases where their participation is mandatory;
- an investigation was conducted by the person subject to recusal;
- illegal methods of interrogation were used;
- if the work is incorrectly combined or separated.

M.N. Pereverzev presented procedural violations, which were considered unconditionally significant, somewhat differently. In particular, "the decision to involve in the case as an accused must comply with all the requirements of the law. Serious violations, which are grounds for the prosecutor to return the criminal case to the investigator for further investigation, arise in the following cases: if the definition of the charge does not correspond to the actual materials of the criminal case; if the decision to involve the accused in the case does not indicate who is being prosecuted, the article, part, or clause of the criminal law in which the accused's actions were qualified; if qualification is not established for all episodes; if the reasons and method of committing the crime are not indicated"[14].

Agreeing with the opinion of L.D. Kalinkina, the unconditional grounds for the prosecutor to return a criminal case for additional inquiry and investigation may be the following violations of the criminal procedure law:

- 1) "an inquiry was conducted instead of a preliminary investigation;
- 2) violation of the requirements of Article 361 of the Criminal Procedure Code regarding the decision to involve a person as an accused;

3) violation of the requirements of Article 379 of the Criminal Procedure Code regarding the indictment;

4) Violation of the requirements of the Criminal Procedure Code regarding the grounds, conditions, procedure, process, and formalization of the results of investigative actions, which raises irreconcilable doubts about the reliability of the obtained evidence;

5) violation of the principle of providing defense to the accused;

6) deprivation or restriction of the rights of the victim, their representative, civil claimant, civil defendant, and their representatives"[15].

According to the results of the conducted research, it was concluded that a change in the scope of the accusation or a change in the qualification of the accused's actions is also one of the unconditional grounds. The legislator, in part 2 of Article 385 of the Criminal Procedure Code, established that if it is required to supplement the charge or amend it in favor of aggravating it, or in favor of a charge that differs significantly from the previous one, the prosecutor or his deputy shall return the case for additional investigation to declare an additional or amended charge.

K.B. Kalinovsky noted that "the prosecutor has the right to return the criminal case to the investigator for further investigation." The grounds for this may be:

1) incomplete and objective clarification of the circumstances subject to proof;

2) the need to change the charges;

3) violation by the investigator of the requirements of procedural law both in the collection of evidence and in the performance of other procedural actions;

4) the need to search for the accused"[16].

Thus, the aforementioned authors consider a change in the scope of the charges as one of the grounds for returning the criminal case to the investigator for further investigation. Law enforcement officers from the prosecutor's office share the same opinion, most of whom argue that a change in the scope of the charges or the qualification of the accused's actions is the basis for returning the criminal case to the investigator, and not to an independent decision of the prosecutor.

Ultimately, we agree with these authors and the prosecutor's office that a change in the scope of the charges or the qualification of the accused's actions is one of the grounds for returning the criminal case to the investigator for further investigation.

In our opinion, a serious violation of the criminal procedure law by the prosecutor as a basis for returning the criminal case to the investigator is a non-compliance with the norms of procedural law in criminal procedural activity, as a result of which the rights and legitimate interests of the participants in the criminal process are limited or deprived of, the evidence does not meet the requirements of legality and admissibility, leads to an incorrect qualification of the criminal act, and also creates serious obstacles for the court to make a lawful, reasonable, and fair final procedural decision on the criminal case.

We want to emphasize that the list of serious violations of the criminal procedure law, which are grounds for the return of a criminal case by the prosecutor, can be enshrined in law. Because Article 488 of the Criminal Procedure Code defines the grounds for reversal or modification of a court decision by an appellate court as a specific list of serious violations of criminal procedure law. Similarly, a list of unconditional grounds can be established for the pre-trial stage.

The issue of serious violations of the norms of criminal procedure law is of great importance at each stage of criminal proceedings. Preventing and eliminating such violations at the pre-trial stage plays a significant role in ensuring the rule of law.

A serious violation of criminal procedure law is a non-compliance with the norms of procedural law in criminal procedural activity, which entails the following negative consequences:

restriction or deprivation of the rights and legitimate interests of participants in the process;

non-compliance of evidence with the requirements of legality and admissibility;

incorrect qualification of the criminal act;

the emergence of serious obstacles to the court's adoption of a lawful, reasonable, and fair final procedural decision.

Identifying and eliminating serious violations of criminal procedure law at the pre-trial stage is important for the following reasons:

- it is possible to prevent excessive resource, time, and labor costs by identifying and eliminating serious violations of the law at the initial stages of criminal proceedings.

- evidence collected at the stage of pre-trial proceedings serves as the basis for further judicial proceedings. If violations are committed at this stage, the evidence may be deemed inadmissible and may affect the outcome of the entire criminal case.

- detection of violations of the law at the initial stages allows for effective protection of the rights of the suspect, accused, and other participants in the process.

- Proceedings based on evidence collected in a legal manner serve the adoption of a fair court decision.

Article 488 of the Criminal Procedure Code defines the grounds for reversal or amendment of a court decision by the appellate court as a specific list. Similarly, establishing a list of unconditional grounds for the pre-trial stage also has a number of advantages:

ensures legal certainty in the activities of investigative bodies and the prosecutor's office with a specific list of serious violations of the criminal procedure law, which are grounds for the prosecutor to return the criminal case;

the presence of such a list encourages investigators and inquiry officers to strictly comply with the requirements of the law, as a result of which the quality of the investigation is improved;

the presence of clear criteria for the implementation of prosecutorial oversight increases the effectiveness of oversight;

if there is a legally enshrined list, a unified practice will be formed in the activities of all law enforcement agencies.

It would be advisable to include the following cases in the list of serious violations of criminal procedure law at the pre-trial stage:

Performance of procedural actions by persons not authorized to initiate and investigate a criminal case;

violation of the suspect's or accused's right to defense, in particular, interrogation without the participation of a lawyer;

deprivation of a participant in the proceedings of the right to familiarize themselves with the case materials in their native language or a language they speak;

violation of the requirements of the law in the collection and consolidation of evidence;

non-appointment of an expert examination in cases where an expert opinion is required;

initiation of criminal proceedings against persons who cannot be prosecuted;
drawing up an indictment in a criminal case without establishing the corpus delicti.

At the stage of pre-trial proceedings, it is important to theoretically study and introduce into legislation the factor of serious violation of the criminal procedure law. By including in the Criminal Procedure Code a specific list of serious violations of the criminal procedure law, which are grounds for the prosecutor to return the criminal case, it is possible to ensure uniformity in law enforcement practice, protect the rights and legitimate interests of the participants in the process, as well as ensure the fairness and legality of the trial.

These changes will serve to strengthen the principle of legality in criminal proceedings and improve the quality of justice in general.

Taking into account the results of the conducted research and the opinions of procedural scholars who studied serious violations of criminal procedure law, we consider it necessary to supplement the current Criminal Procedure Code with Article 3851 "Return of a criminal case by the prosecutor for additional investigation to eliminate serious violations of the norms of this Code" in the following wording:

"Serious violations of the following criminal procedure law in any case are grounds for returning a criminal case for additional investigation:

restriction or deprivation of the rights and legitimate interests of participants in criminal proceedings;

violations of the law leading to the inadmissibility of evidence;

incorrect qualification of the criminal act."

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