

Legal Basis of the Prosecutor's Powers at the Stage of Initiating a Criminal Case

Olimjonov Khumoyun Jakhongir ugli

Law Enforcement Academy of the Republic of Uzbekistan, Independent researcher

Abstract. *This article analyzes the prosecutor's powers and their limitations at the stage of initiating a criminal case, based on the provisions of the Criminal Procedure Code. The procedural involvement of the prosecutor in the pre-investigation verification process and the possibilities of influencing decisions on initiating or refusing to initiate criminal proceedings are examined based on legal norms.*

Key words: *Criminal case initiation stage, prosecutor's powers, limitations of powers, Criminal Procedure Code, pre-investigation verification, prosecutorial oversight, principle of legality, individual rights, procedural safeguards, protection of human rights.*

It should be noted that, taking into account the provisions of the Criminal Procedure Code, the prosecutor's powers at this stage are somewhat limited. Specifically, the prosecutor can only react to violations committed during the verification of a crime report or statement after the process has concluded, after receiving a copy of the decision made, and after conclusions that can be used to decide on initiating or refusing to initiate a criminal case have been drawn. Therefore, it must be acknowledged that one of the tasks of prosecutorial oversight at the stage of initiating a criminal case, namely taking immediate action against law violations committed during the pre-investigation check, can no longer be fully carried out. Articles 331 and 333 of the Criminal Procedure Code do not specify a precise timeframe within which the prosecutor must review the relevant materials to determine the legality or illegality of the decision to initiate or reject a criminal case¹.

It is advisable to include in the powers of the prosecutor to ensure the observance of the rights of persons participating in the case and the right to give an opinion on the legality of decisions to refuse to initiate criminal proceedings on the fact that the bodies of pre-investigation verification have not conducted an unjustified investigation of applications and reports of crimes. For the recognition of a decision to refuse to initiate criminal proceedings as legal, it is important to formalize it in the procedural order. Because, on the one hand, the prosecutor will give a legal assessment of the actions of officials of the body carrying out operational-search activities and pre-investigation checks. On the other hand, the decision made by pre-investigation verification bodies will lead to a reduction in the number of cases of its cancellation by the prosecutor in the future. For example, according to statistics received from the Prosecutor General's Office, in the first half of 2025 alone, the number of overturned decisions on refusal to initiate criminal proceedings during the verification by prosecutors of decisions made by internal affairs bodies to refuse to initiate criminal proceedings amounted to 744. In 2024, this figure was 1182². When an official of the pre-investigation verification body decides to refuse the initiation of each criminal case, it is advisable to obtain a conclusion from the prosecutor. This conclusion serves as the result of oversight activities. However, it does not preclude

¹ Ўзбекистон Республикасининг Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2025.

² Ўзбекистон Республикаси Бош прокуратураси берган маълумоти.

the possibility of initiating a criminal case if new information about the crime emerges later, even if a decision was previously made to refuse the initiation of a criminal case based on the prosecutor's conclusion, which was recognized as lawful and substantiated. If an official of the body conducting the pre-investigation check refuses to initiate a criminal case independently without the prosecutor's agreement, it may subsequently lead to a violation of the rights of citizens involved in the case.

In this regard, it is proposed to supplement Article 333 of the Criminal Procedure Code with the following content:

"Before officials of the operational-search activities body or pre-investigation verification body make a decision to refuse the initiation of a criminal case, the prosecutor shall issue a conclusion."

If the prosecutor finds the refusal of an official of the pre-investigation inquiry body to initiate a criminal case lawful, they make a corresponding entry in the book of refusal to initiate criminal cases. Certainly, to ensure the rights, freedoms, and legitimate interests of citizens at the stage of initiating criminal proceedings, the prosecutor must have significant powers to suppress identified violations. In our opinion, this should apply not only to decisions made by officials of the operational-search activities and pre-investigation verification bodies but also to decisions made during inquiry or preliminary investigation.

Thus, the implementation of prosecutorial supervision over the legality of relevant agencies' activities in receiving, registering, and resolving applications and reports on crimes will serve as a guarantee for protecting the rights, freedoms, and legitimate interests of individuals and legal entities in the future. According to practice and statistical data, the most frequent violations of citizens' rights and freedoms occur at the stage of initiating criminal proceedings. This is primarily due to the insufficient provision of the prosecutor's supervisory powers.

According to the results of a survey conducted among respondents, when asked at which stage human rights and freedoms are violated, 63% of participants answered that violations occur at the stage of operational-search activities and pre-investigation verification, 28% at the preliminary investigation stage, and only 9% at the court stage.

In the analysis of subsequent issues, attention will be paid to some current aspects of ensuring through the means of prosecutorial supervision the reception, registration, and resolution of applications and reports of persons at the stage of initiating a criminal case. Compared to judicial control, prosecutorial oversight has its own specific characteristics in protecting individual rights and freedoms. This is especially evident in the acceptance, registration, and resolution of applications and reports from individuals at the stage of initiating criminal proceedings. Therefore, the powers of prosecutors are enshrined in a number of laws, including the Criminal Procedure Code, the Law "On the Prosecutor's Office"³, Law "On Operational Search Activities"⁴, Internal departmental orders and numerous other laws reflect this.

Specifically, the Criminal Procedure Code is aimed at ensuring the constitutional rights and freedoms of citizens, calling for their comprehensive and thorough examination through various means and methods. Of course, according to legislation, the legal status of individuals reporting crimes is considered crucial when receiving, registering, and resolving crime reports and applications. This is because without reflecting the legal status of individuals in legislation, it is impossible to protect them effectively.

At the stage of initiating a criminal case, effective defense is impossible without establishing the procedural status of individuals, including the applicant, the crime victim, the suspect, and witnesses. Consequently, for prosecutorial oversight to function as a guarantee of rights protection, it is necessary to define the rights and obligations of participants in the law. This, in turn, allows the prosecutor to actively intervene in a timely manner to protect individuals' rights, thereby taking

³ Ўзбекистон Республикасининг 2001 йил 29 августдаги 257-II-сонли "Прокуратура тўғрисида"ги Қонуни.

⁴ Ўзбекистон Республикаси 2012 йил 25 декабрдаги ЎРҚ-344-сонли "Тезкор-қидирув фаолияти тўғрисида"ги Қонуни.

measures to eliminate all violations of the law, undoubtedly achieving the restoration of rights. Of course, the prosecutor should have the opportunity to influence the actions or inaction of officials involved in operational-search activities or pre-investigation verification through legal means. Additionally, at the stage of initiating a criminal case, the applicant, crime victim, suspect, and witnesses should also have the opportunity to exercise their rights and legitimate interests, for example, the right to complain to the prosecutor about the actions or inaction of officials involved in operational-search activities or pre-investigation verification. For this, firstly, it is necessary to define in legislation the specific rights and obligations of the applicant, crime victim, suspect, and witnesses, that is, to clarify the relationships of the participants as much as possible, and secondly, it is necessary to improve prosecutorial supervision activities in this area. This is also necessary to distinguish between departmental control, judicial control, and prosecutorial control at the stage of initiating a criminal case. In this field, A.S. Pulatov studied the status of witnesses in criminal proceedings and issues of its improvement⁵, L.I. Astanova on the status of a witness in criminal proceedings⁶ and Sh. Khaknazarov on issues of ensuring the safety of participants in criminal proceedings⁷ and others attempted to clarify the definition of the legal status of individuals. The opinion of M.T. Botaev on this topic is appropriate. He emphasized that it is necessary to create the necessary conditions for the free movement of persons participating in the initiation of criminal proceedings and the realization of their rights and legitimate interests. It should be noted that during the pre-investigation check, they cannot be involved as victims, witnesses, or suspects. However, in practice, they still use the status of victim, witness, and suspect. Of course, this is against the law. Determining their procedural status, on the one hand, is beneficial for the persons involved in the case, and on the other hand, imposes responsibility on the officials carrying out the pre-investigation check⁸. Indeed, this serves to clarify the relationships between participants and officials of the relevant authority, promotes "transparency," and reduces the risk of offenses. By establishing the procedural status of participants in legislation, it instills confidence in them that applications and reports of crimes will be considered and legal measures will be taken.

In 95% of the 180 materials on refusal to initiate criminal proceedings studied within this framework, the authors of criminal complaints indicated that they were directly subjected to physical, moral, or material damage in connection with a particular act. From the studied materials, it becomes clear that most often, the complainants slandered individuals and provided false information. This was based on mutual enmity, hostility, or other reasons. In practice, people who suffered from the false allegations of complainants rarely filed lawsuits. They emphasized that this situation leads to a significant time investment, causes nervousness, mutual quarrels, and that they cannot tolerate its consequences. At the same time, in practice, it is somewhat difficult to effectively ensure guarantees of prosecutorial supervision, since the consideration of applications and reports on crimes at the stage of initiating a criminal case covers a short period of time.

Thus, the guaranteeing role of prosecutorial supervision at the stage of reviewing applications and reports of crimes should be manifested, first and foremost, in ensuring the timely consideration of applications and reports, the validity of decisions made based on their results, compliance with the procedural form in reviewing applications and reports, and fulfilling the legal requirements regarding the rights of applicants.

Since the stage of initiating a criminal case requires the shortest investigation in terms of time, it demands high efficiency and transparency of the mechanism that ensures the observance of participants' rights. This is evidenced by the number of appeals citizens make to the prosecutor's office for the protection of their rights, namely, the clear examples of prosecutors eliminating instances of unlawful refusal to initiate criminal proceedings. In turn, this indicates that the

⁵ Пулатов А.С. Жиноят процессида гувоҳнинг мақоми ва уни такомиллаштириш масалалари: Автореф.дисс...юридик. фан. фалсафа. докт (PhD). ТДЮУ, 2022.

⁶ Астанова Л. И. Проблема статуса свидетелей в уголовном процессе. Автореф.дисс...канд. юрид. наук. Т., МВД, 1993.

⁷ Хақназаров Ш. Суднинг жиноят процесси иштирокчиларининг ҳавфсизлигини таъминлаш масалалари. Автореф.дисс...юридик. фан. фалсафа. докт (PhD). Т., Ҳуқуқни муҳофаза қилувчи академия, 2023.

⁸ Ботаев М.Т. Терговга қадар текширувда шахснинг ҳуқуқ ва эркинликларини таъминлаш йўллари. ТЕРГОВ ДЕПАРТАМЕНТИ / СЛЕДСТВЕННЫЙ ДЕПАРТАМЕНТ | 2/2022. 14-сон. – Б. 43-47.

prosecutor's office is developing an effective mechanism for guaranteeing individuals' rights. The guarantee of prosecutorial supervision, on the one hand, manifests itself in the consideration of citizens' complaints about the actions or decisions of pre-investigation verification bodies, and on the other hand, allows, within the limits of its authority, to oversee operational-search activities, supervise officials of pre-investigation verification bodies, and take measures of influence.

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4. ¹ Ўзбекистон Республикаси 2012 йил 25 декабрдаги ЎРҚ-344-сонли “Тезкор-қидирув фаолияти тўғрисида”ги Қонуни.
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