

## **The Procedural Status of the Accused in the Pre-Trial Proceedings**

**Amanov Azamat Akmal Ugli**

*Independent Researcher of Academy of the Ministry of Internal Affairs of the  
Republic of Uzbekistan*

**Abstract:** The article analyzes coercive measures that can determine the procedural status of the accused in pre-trial proceedings, determine his rights and freedoms, impose duties, and be applied to the suspect by the investigator, inquirer and prosecutor. Also, in this regard, a scientific discussion is being introduced, taking into account the opinions of scientists from a number of national and foreign countries, and problems arising in practice are being studied. Also, on the basis of international legal standards, proposals and recommendations have been developed to improve the Criminal Procedure Code of the Republic of Uzbekistan.

**Keywords:** suspect accused defendant, defendant, detention defender, investigator, investigator, prosecutor court.

According to Article 28 of the Constitution of the Republic of Uzbekistan, a person accused of committing a crime is considered innocent until his guilt is proven through a public trial in accordance with the procedure provided by law and until it is determined by a legally binding court verdict. The accused shall be provided with all opportunities to defend himself.

All doubts about guilt should be resolved in favor of the suspect, the accused, the defendant or the convicted person, if the possibilities of their removal have been exhausted.[1]

According to Article 45 of the Civil Code, the accused is a person who has been ordered to participate in the case as an accused in accordance with the procedure established by the Civil Code.

The accused is the procedural status that belongs to the person against whom the criminal case is initiated. The accused has the procedural status only at the stage of inquiry and preliminary investigation, after the case is brought to court and from the time the case is set for consideration in court, the person has the status of a defendant[2]. In some literature, impeachment is interpreted as the right decision when there is sufficient evidence[3], while in some, impeachment is considered as a procedural action[4].

Legal scientist T.T. Shamurzaev gave the author's definition of the concept of involvement as an accused, which is the decision of the investigator based on sufficient evidence to charge a specific person[5].

In jurisprudence, the involvement of a person as an accused in criminal proceedings is also approached as a legal institution[6]. In this approach, a set of norms is understood that regulates relations related to involvement of a person as a defendant in a criminal case .

The decision to be involved as a defendant in a criminal case is formed in the internal confidence of the investigator or prosecutor at the preliminary investigation stage and becomes a document. The transformation of this decision into an external expression is manifested as a procedural action. That is why in some legal literature, involvement as an accused is approached as a procedural action[7].

the General Prosecutor of the Republic of Uzbekistan No. 120 of December 26, 2014, "During the investigation of a criminal case, a person should not be unjustly involved in the case as an accused before all doubts about guilt have been eliminated, and all the evidence exposing the crime has not been collected. Regardless of whether or not there were grounds for this at the time of initiation of a criminal case, criminal cases should be terminated in cases where there is insufficient evidence to convict a person during the investigation of the case"[8].

Categories such as "conditions", "circumstances", "grounds", "scope of proof", "subject of proof" and "time of involvement as an accused" are used to study the reality that exists when a person is brought as an accused in a criminal case. Exactly which of these are used depends on the approach of the author.

If we talk about the essence of the concept of "accused", according to the majority of the authors here, it is derived from the root word "accusing" which indicates an action and means "to find guilty, to blame, to scold; to prosecute as guilty"[9]; "to be considered guilty of something, sinful; to sue as guilty of something, to find him guilty in a judicial procedure" [10]; "to blame, to blame, to consider as the cause". The word "accusation" is close to the word "accusation", in turn, the latter means "to find guilty of something, to impose some kind of guilt on someone; "prosecuting party in criminal proceedings" shall have the following meanings. There are other points, but they are all directly or indirectly related to the above.

Some of the legal scholars evaluate the explanation of the rights and obligations of the accused as a component of involvement as an accused, and believe that only after that a person can be involved as an accused [11]. Since the essence means the basic meaning of a specific and existing event[12], such opinions should be supported.

In our opinion, the decision to involve a person as an accused in a criminal case defined in Article 361 of the Criminal Code *should be made only after collecting sufficient evidence in the case to involve this or that person in the case as an accused.*

Thus, the legislator connects the appearance of a participant in the criminal proceedings, such as the accused, with the adoption of criminal-procedural decisions before the following court:

1. full or short indictment or indictment decision concluding the investigation;
2. making a separate decision to bring a person as an accused during the preliminary investigation (Article 361 of the Criminal Procedure Code).

It is also important to connect the time of implementation of the procedural act of involvement as an accused in a criminal case with the time when sufficient information about the person's crime has been gathered to accuse a person of committing a crime.

Although the issue of ensuring the rights and freedoms of a person when being accused in a criminal case is defined in the criminal procedural legislation, there are cases of not fully understanding the essence, giving a high value to some types of evidence when justifying the accusation, and involving them to participate as an accused without sufficient grounds. . When legal scientist B.A. Rajabov researched issues such as collection, verification and evaluation of evidence in criminal proceedings, it was found that evidence was not acceptable in 92 (83.6%) of 479 criminal cases that were rehabilitated due to non-compliance with the general conditions of proof. In addition, in 22 out of 195 criminal cases (7.3%) in which the state of compliance with the general conditions of proof was studied, the conditions related to the protection of the rights and legal interests of citizens were violated during the process of proof [13]. However, no means other than evidence can be the basis for determining the circumstances of a criminal case.

Cases of unjustified suspension of investigation in some criminal cases, return of criminal cases sent to the prosecutor's office and courts with indictment for further investigation, termination of criminal cases under Article 83 of the Criminal Code are allowed.

The saddest thing is that due to the indifference of some leaders, negative situations such as gross violation of service discipline by investigative staff and abuse of service authority can still be observed.

320<sup>3</sup> of the Criminal Code, (investigation of a criminal case), the investigation of a criminal case is carried out in the form of an inquiry or a preliminary investigation. Procedural actions aimed at finding, verifying and recording factual information important for determining the circumstances of a criminal case, carried out by an investigator, investigator, prosecutor in accordance with the requirements of the criminal procedural law, are called investigative actions.

In some literature, it is defined as the procedural activity of an investigator, investigator and prosecutor aimed at collecting and checking evidence within the framework of a criminal case [14], and in some literature it is defined as the most effective and widely used method of evidence collection [15].

According to the tasks to be solved during the implementation of these actions, investigative actions are divided into two independent groups:

- 1) investigative actions of a research nature used by the investigative body, investigator or prosecutor in the preliminary (pre-trial) procedure to solve the tasks related to identification, verification and recording of evidence;
- 2) other investigative actions aimed at ensuring the rights of persons participating in the case.

Some legal scholars have divided this classification into the following four groups: 1) by the method of reflecting factual information; 2) according to the nature of the information; 3) by the complexity of the reflected objects; 4) on the purpose of the investigative action.[16]

Conducting any investigative actions must inevitably be based on ethics. The rights, freedoms, honor and dignity of the persons participating in the investigation should not be violated, as well as their health should not be harmed.

In conclusion, the determination of the legal status of the accused in the process of bringing the case to court imposes on him the guarantee of his rights and freedoms within the framework of the criminal case, as well as the responsibility of fulfilling the obligations assigned to him. At the same time, it also affects the application of procedural coercive measures that may be applied to the suspect by law enforcement agencies.

#### References:

1. The Constitution of the Republic of Uzbekistan electronic source <https://www.lex.uz/docs/6445145#6445996>
2. Sahaddinov S. Comments on the Criminal Procedure Code of the Republic of Uzbekistan. General part (scientific-practical review) / Responsible editor: Professor B.Kh. Polatov. - Tashkent: New age generation, 2014. - B. 94.
3. Uголовный процесс / Под ред. I. L. Petrukhina. - Moscow: Prospekt, 2001. - 255 p.
4. Khidoyatov B. B., Inoghomjonova Z. F. and others. Criminal proceedings (Special part)/ Z.F. Under the general editorship of Inoghomjonova. - T.: TDYuI publishing house, 2008. - 69 p.; Yakupov R. X. Uголовный процесс. - Moscow: Zertsalo, 1998. - 263 p.
5. Shamurzaev T. T. Establishment and order of privilecheniya litsa v kachestve obvinyaemogo po uголовно-procesualnomu zakonu of the Kyrgyz Republic. Autoref. dis. ... sugar. walk science Bishkek: Kyrgyz-Russian Slavic University, 2002. – 7 p.
6. The phrase "law institution of involvement as an accused" can be observed in many literatures. Serdechnaya R. G. Privlechenie v kachestve obvinyaemogo i osushchestvlenie principov uголовного processa. Autoref. dis. ... candy. walk science - Volgograd: Volgogradsky Yuridichesky Institute MVD RF, 1999. - S. 8–9; Lipnik L. G. Привлечение в качестве обвиняемого // Российский сложатель. - Moscow, 2006. - No. 9. - S. 7.
7. Hidayatov B. B., Inoghomjonova Z. F. and others. Criminal proceedings (Special part) / edited by Z.F. Inoghomjonova. – Tashkent: TDYuI, 2008. – B. 69.

8. Order No. 120 of the General Prosecutor's Office of the Republic of Uzbekistan of December 26, 2014 "On coordination of activities to prevent and fight against crime and increase the effectiveness of the prosecutor's control over the execution of laws in the process of pre-investigation, investigation, preliminary investigation and rapid search" clause.
9. Dal V. I. Tolkovyy slovar zivogo velikoruskogo zyzyka. V 4-x tomax. Tom 3. M. : Ripol classic, 2006. URL: <http://slovardalja.net/word.php?wordid=20329> (data obrashcheniya: 20.11.2020)
10. Ojegov S. I. Slovar russkogo yazyka, M., 1988. S. 340
11. Vandyshev V. V. Ugolovny process. The course is a lecture. - SPb.: Peter, 2002. - 448 p.
12. Mukhitdinov F. M. Criminal procedure: essence, content, form. - Tashkent: Adolat, 2002. – B. 13.
13. Rajabov B. A.: Collection, verification and assessment of evidence in criminal proceedings: monograph - Tashkent: MIA Academy, 2019. - B. 244.
14. Criminal procedural law. General section: Textbook / Author team. - T.: TDYU, 2017. - B. 474, Khojakulov S. B. Procedural actions: concept, classification and systematization: Tutorial. - T.: MIA Academy, 2013. - B. 8; Grudinin I. A. Means of evidence in legal production: system, content, epistemological aspects: autoreferat dissertatsiya na soiskanie uchenoy stepin kandidata yuridicheskikh nauk. - Ekaterinburg, 2012. - S. 8–9.
15. Shafer S. A. Methodological and legal problems of the collection of evidence in the Soviet criminal process: autoreferat. ...dis. ... kand. yurid. nauk. - Moscow, 1981. - S. 7.
16. Shafer S. A. Sledstvennye deystviya. Sistema i procedural form. - M., 2001. - S. 54–68.