

Issues Related to the Types of Procedural Functions of the Head of the Investigative Body

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Abstract. *This article analyzes issues related to the types of procedural functions of the head of the investigative body. Additionally, problems concerning two groups of functions performed by the head of the investigative body have been thoroughly examined. Furthermore, the work of national and foreign scholars, as well as relevant legislation, has been analyzed.*

Key words: *preliminary investigation, criminal procedure, investigator, head of the investigative body, status, function, leadership, obligation.*

Scientists divide the functions performed by the head of the investigative body into two groups: the first is a procedural function, and the second relates to the organizational and managerial function. The head of the investigative body, within his competence, carries out procedural guidance and procedural supervision in pre-trial proceedings and manages subordinate investigative bodies¹.

Speaking about the procedural leadership function of the head of the investigative body, Kh.S. Tadjiev noted that the task of the head of the investigative body consists precisely of procedural leadership, which is "the proper organization of investigative work in the managing department, procedural guidance, that is, the investigation of criminal cases using the forms and methods provided for by the criminal procedure law, ensuring its high quality, completeness, comprehensiveness, and objectivity, where procedural guidance is considered as a method of departmental control"². Indeed, if we analyze Article 37 of the Criminal Procedure Code, it states that the head of the investigative body has the right to examine the cases of the lower body, determine the direction of the case, transfer the case from one investigator to another or to several investigators and give instructions, as well as personally conduct the investigation. From this it follows that the legislator notes that the head of the investigative body also has the authority to head the investigator and investigative groups in the case. Moreover, in the case, the head of the investigative body simultaneously performs the duties of an investigator and remains the head of the investigative body, retaining procedural guidance of the case.

It should be noted that the interference of the head of the investigative body in the procedural activities of the investigator is necessary only in cases where the investigator is unable to perform their procedural duties. The transfer of control through the management function to the head of the investigative body presupposes that it should consist in the elimination of violations committed by the investigator.

According to a survey conducted among practitioners, 43% of respondents answered that the most important function for the head of the investigative body is the function of procedural guidance of the

¹ Курс уголовного судопроизводства: Учеб.:в Зт. / Под ред. В.А. Михайлова.-Т1: Общие положения уголовного судопроизводства,- М.: Изд-во Московского психолого-социального института; Воронеж: Изд-во НПО «МОДЭК»,2006.-С.414-415.

² Таджиев Х.С. Прокурорский надзор и ведомственный контроль за расследованием преступлений. Ташкент. Изд-во «ФАН», 1985. С. 71,75

investigator's activities; 30% consider it an important function of supervising the investigator's procedural activity; 27% - the accusation function.

The issue we are analyzing is that the function of managing the investigator's procedural activity is considered by some scholars as "investigation management" or "procedural guidance." I.V. Emelyanov expresses the following opinion on this matter. He emphasized that he considers procedural guidance of the investigator's activities not a function, but a "procedural principle of leading the investigation"³. If we call the function "supervising the investigation," then it can be concluded that it operates only at the stage of the preliminary investigation. However, in accordance with the Criminal Procedure Code of the Republic of Uzbekistan, the scope of the function of supervising the investigator is limited not only to the preliminary investigation stage, but can also be carried out at the stage of initiating a criminal case and resuming criminal proceedings due to newly discovered circumstances. In addition, the function of procedural guidance includes the verification of materials carried out by the head of the investigative body before the investigator makes a corresponding decision. M.P. Kahn also confirms the above points. According to him, the function of procedural guidance begins at the stage of consideration of applications and reports of a preliminary crime⁴. In our opinion, it is appropriate to consider the management of procedural activities over the investigation as a separate, independent function. Because the head of the investigative body checks cases, determines the direction of the case, transfers the case from one investigator to another or transfers it to several investigators and gives instructions, sets requirements and issues decisions that are binding on the investigator. Therefore, it means exercising leadership over the investigator's procedural activities.

Thus, procedural guidance of the investigator's activities can be considered as the main function performed by the head of the investigative body, which is predetermined by the scope of procedural powers currently granted to the head of the investigative body by law.

The essence of the function performed by the head of the investigative body lies in the fact that the investigator directly takes measures to initiate a criminal case and conduct a preliminary investigation in a timely, complete, comprehensive, and objective manner, determines the course of the case, gives instructions on conducting individual investigative actions, and coordinates the investigator's activities.

Based on the functions assigned to the head of the investigative body, procedural guidance of the investigator's activities primarily consists of assisting in the professional and effective solution of procedural tasks facing the investigator, as well as the proper organization of the investigator's work, improving the quality of the investigation, forming the evidence base, and coordinating the investigator's activities. This, in turn, is achieved through the investigator's full and comprehensive identification of the circumstances of the crime, proper planning of investigative procedural actions, putting forward and verifying reasonable assumptions; prompt identification and consolidation of evidence, skillful use of special knowledge, application of effective methods of investigation, objectivity of decisions made by the investigator, prompt exposure of the person who committed the crime, their correct assessment, timely and appropriate application of measures of procedural coercion, and others. Taking measures to prevent violations of the requirements of criminal, criminal procedure, and other laws during the consideration of criminal cases by the investigator. As practice shows, the head of the investigative body (including the prosecutor) gives a written opinion on the investigator's decision to refuse to initiate a criminal case. This, in turn, is carried out to confirm the legality and validity of the decision made by the investigator. It also serves as a guarantee of the observance of the constitutional rights and legitimate interests of citizens. This is the main task of the head of the investigative body.

paragraph 8 of Chapter 2 of the Order of the Minister of Internal Affairs of the Republic of Uzbekistan dated June 12, 2017 No. 100 "On Approval of the Instruction on the Procedure for Organizing Inquiry

³ Емельянова И.В. Организационные и процессуальные отношения в деятельности прокурора, надзирающего за расследованием // Совершенствование законодательства о суде и правосудии. М., 1985. С. 115.

⁴ Кан М.П. Процессуальные функции прокурора на досудебных стадиях уголовного процесса. Автореф. Дисс... канд. юрид. наук. Ташкент. 1998. С.5

and Preliminary Investigation in the Internal Affairs Bodies of the Republic of Uzbekistan"⁵, on the organization and coordination of the preliminary investigation. Of course, the function of the prosecutor's office to coordinate the activities of investigative bodies in the fight against crime with the coordination of the investigator's activities⁶ We shouldn't replace with.

The coordinating function of the prosecutor's office is aimed at monitoring the implementation of laws by the bodies carrying out inquiry and preliminary investigation in the country, as well as reducing the level of crime. In our opinion, the function of the head of the investigative body should be considered primary at the pre-trial stage in accordance with the law, the function of leading the investigation.

The next function of the head of the investigative body is departmental procedural control. The function of procedural supervision, carried out by the head of the investigative body, is understood as the activity carried out by subordinate investigators in accordance with the requirements of the Criminal Procedure Code for the reception, registration, resolution of applications and reports on crimes, detection, investigation, and prevention of offenses.

According to Yu.N. Belozerov, there are two functions of departmental control in criminal proceedings: 1) control over the procedural activity of the investigator; 2) control over the organization of the investigation⁷.

Speaking about procedural supervision over the activities of an investigator, the term "procedural supervision" is enshrined in departmental regulatory documents, in particular, in paragraph 8 of Chapter 2 of the Order of the Minister of Internal Affairs of the Republic of Uzbekistan dated June 12, 2017 No. 100 "On Approving the Instruction on the Procedure for Organizing Inquiry and Preliminary Investigation in the Internal Affairs Bodies of the Republic of Uzbekistan"⁸.

It should be agreed with A.V. Solovyov that, unlike prosecutorial supervision, procedural supervision carried out by the head of the investigative body does not transform it into a supervisory body, but serves as a necessary tool for procedural guidance of the investigation⁹.

The essence of the procedural supervision of the head of the investigative body is that, when the investigator reveals deviations from the law, it involves inspecting the investigator's case, giving instructions and assignments for conducting investigative actions, participating in the preliminary investigation, or conducting the investigation personally. Granting the legislator, the head of the investigative body, the authority to investigate the investigator's case primarily consists of verifying and evaluating the evidence collected by the investigator, as well as making a decision based on the investigation materials in order to identify the committed or planned violations of the law, identifying and eliminating the committed violations.

In our opinion, based on the essence of the procedural control function assigned to the head of the investigative body, it can be considered as a mechanism that contributes to the effective solution of the tasks facing the investigator (criminal procedural) at the pre-trial stage for a lawful and reasonable solution. For example, an example of this is the transfer of a case from one investigator to another in order to eliminate shortcomings made by the investigator during the preliminary investigation during procedural supervision. In addition, it is possible to include such powers as giving instructions to the investigator, excluding the investigator from the continuation of the investigation in cases of unlawful actions by the investigator.

⁵ Ўзбекистон Республикаси Ички ишлар вазирининг 2017 йил 12 июндаги 100-сонли "Ўзбекистон Республикаси ички ишлар органларида суриштирув ва дастлабки терговни ташкил этиш тартиби тўғрисидаги йўриқномани тасдиқлаш ҳақида"ги Бўйруғи.

⁶ Ўзбекистон Республикасининг 2001 йил 29 августдаги 257-II-сонли "Прокуратура тўғрисида"ги Конуни. 4-модда.

⁷ Моругина Н.А. Руководитель следственного органа как участник уголовного судопроизводства со стороны обвинения. автореф. дис. ... канд. юрид. наук. М., 2010. С. 54.

⁸ Ўзбекистон Республикаси Ички ишлар вазирининг 2017 йил 12 июндаги 100-сонли "Ўзбекистон Республикаси ички ишлар органларида суриштирув ва дастлабки терговни ташкил этиш тартиби тўғрисидаги йўриқномани тасдиқлаш ҳақида"ги Бўйруғи.

⁹ Соловьев А.Б. Токарева М.Е. Буланова Н.В. Прокурор в досудебных стадиях уголовного процесса России. М., 2006. С. 58

Of course, the supervision entrusted to the head of the investigative body should be considered as an important, but additional, function in the investigation of criminal cases. On this matter, it is appropriate to agree with the opinions of V.P. Ashitko, P.V. Lementa, and O.V. Khimicheva. They emphasize that procedural supervision of the investigation should be considered as part of the procedural supervision of the head of the investigative body¹⁰.

It is true that leadership and control are different, independent, and interconnected functions, but control can be carried out through procedural leadership (assigned authority). That is, leadership should be considered as a means of control. If there is no procedural guidance (authority) over the investigator, then there is no supervision. It is no coincidence that the legislator assigns the supervisory function to the head of the investigative body, primarily aimed at restoring social justice in the case. In the laws, the establishment of procedural supervision over the investigator is considered, first of all, as a guarantee of the protection of the rights and legitimate interests of the individual, society, and the state through the timely, complete, comprehensive, and objective conduct of the case. For this, the head of the investigative body must have the experience of rationally organizing the relationship between the head of the investigative body and the investigator, possessing the necessary managerial skills, and maximizing the use of modern methods and existing organizational techniques in their work.

O.A. Khimecheva's views on this matter are relevant. In his opinion, the effectiveness of procedural control by the head of the investigative body should not decrease, but the transfer of procedural powers to the head of the investigative body should not lead to a restriction of the procedural independence of the investigator¹¹.

Social surveys conducted on the procedural supervision of the head of the investigative body and the independence of the investigator represent the following. The establishment of prosecutorial supervision over the investigator by 90% of respondents, the supervision of the head of the investigative body (widespread delegation of powers), has a significant impact on the procedural independence of the investigator (loss). We did not provide for the removal of any control over the investigator; in practice, the loss of departmental procedural control over the investigator's actions is fully compensated by prosecutorial supervision.

Indeed, if we look at practice, the legislator establishes the issuance of a conclusion by the head of the investigative body and consent by the prosecutor to almost all procedural documents adopted by the investigator. In addition, decisions related to the restriction of the rights of many citizens also require the approval of the investigating judge. Indicates that for a single decision made by the investigator, permission must be obtained from several officials. Often, in practice, the investigator spends a lot of time in the prosecutor's office or courthouse to make a single decision. The indicated issues indicate the creation of a single investigative body. Or, in order to prevent the investigator's excessive hassle and to make decisions in a timely manner, it is advisable that every decision made by the investigator be sent electronically. This, in turn, accelerates the possibility of simultaneous control, review, consent, and decision-making by the persons participating in the case.

These issues are reflected in the Decree of the President of the Republic of Uzbekistan dated May 14, 2018 No. PP-3723 "On Measures for the Fundamental Improvement of the System of Criminal and Criminal Procedure Legislation." In particular, ideas have been put forward for the introduction of a secure system, including through the integration of information systems and databases, allowing investigative bodies to exchange information with prosecutor's offices, courts, and penitentiary

¹⁰ Воронин Э.И. Процессуальные полномочия следователя органов внутренних дел: дис....канд.юрид.наук.-Саратов,1973.-С123. Ашитко В.П. Функция контроля начальника следственного управления в уголовном судопроизводстве: автореф.дис....канд.юрид.наук. М., 1996. С. 10-14; Лемента П.В. Ведомственный процессуальный контроль за предварительным следствием в органах внутренних дел: автореф.дис....канд.юрид.наук. Волгоград, 1999. С. 18-23; Химичева О.В. Концептуальные основы процессуального контроля и надзора на досудебных стадиях уголовного судопроизводства. М., 2004. С. 25-27.

¹¹ Химичева О.В. Концептуальные основы процессуального контроля и надзора на досудебных стадиях уголовного судопроизводства: монография.- М.: ЮНИТИ-ДАНА, Закон и право, 2004. - С. 125

institutions, as well as other organizations, when conducting criminal proceedings in electronic form and carrying out procedural actions, and automating the maintenance of statistics on criminal cases¹².

In general, procedural scholars distinguish several types of control, which are: general and special; internal and external; initial, current, and subsequent. In our opinion, all these classifications can also be applied to the activities of the head of the investigative body. Thus, the control of the head of the investigative body is internal and in most cases is current. Of course, it is impossible to analyze all types of control within one paragraph, therefore, within this paragraph, we will try to consider only the most important and relevant issues in detail.

The next issue to be considered is the criminal prosecution function of the head of the investigative body. That is, in accordance with Article 2 of the Criminal Procedure Code, criminal prosecution manifests itself in the prompt and complete disclosure of crimes, initiation and initiation of criminal proceedings, and exposure of the person who committed the crime, after the detection of the crime by authorized officials. The function of criminal prosecution is not defined in criminal procedure legislation. Pursuit is defined only in Article 3 of the Law of the Republic of Uzbekistan No. ZRU-561 dated September 2, 2019 "On the Protection of Women from Harassment and Violence." According to it, "persecution is understood as actions against the will of the victim, committed despite their resistance or warning twice or more, expressed in the search for the victim, communication with them orally, through telecommunication networks, including the World Wide Web, or by applying other methods, travel to their place of work, study and (or) residence, and causing concern for the victim's own safety"¹³.

In general, criminal prosecution is a procedural activity carried out by the prosecution in order to expose a suspect or accused of committing a crime. Based on the essence of Article 325 of the Criminal Procedure Code of the Republic of Uzbekistan, criminal prosecution is assigned to the official carrying out the Criminal Investigation Department, the Criminal Investigation Department, the investigator, and the prosecutor¹⁴. The legislator did not reveal the concept and essence of criminal prosecution in the Criminal Procedure Code. As mentioned above, criminal prosecution is carried out against the suspect, the suspect, and the accused. Consequently, the function of criminal prosecution can be carried out by competent authorities in relation to a person whose identity is known or unknown at the pre-investigation, preliminary investigation stage.

In our opinion, the assignment of the function of criminal prosecution to the head of the investigative body is justified. Because the head of the investigative body independently manages the investigation process, has the right to expose the person who committed the crime, bring them to criminal responsibility, and apply the necessary measures of procedural coercion against them, which, in turn, implies taking all measures provided for by law to punish them.

However, the legislator did not separate the functions of criminal prosecution and prosecution and did not reveal their differences. This, in turn, caused various debates. I.Ya. Foynitsky and M.S. Strogovich attempted to clarify this issue. They emphasize that, firstly, criminal prosecution as an activity includes any system of actions and decisions stipulated by criminal procedure law, carried out by the prosecution in order to expose a suspect, accused in the commission of a crime. Secondly, the specified activity can be carried out in relation to a specific person who has received the status of a suspect, accused. N.D. Sukhareva, objecting to the opinion of the above-mentioned procedural scholars, tried to clarify this issue. In his opinion, criminal prosecution can be carried out at the initial stage of the case. In this case, the person who is still under criminal prosecution may be unknown or not involved as a suspect for the purpose of exposing the suspect or as a suspect. In our opinion, the opinion of N.D. Sukhareva is valid. Consequently, criminal prosecution can be initiated from the

¹² Ўзбекистон Республикаси Президентининг 2018 йил 14 майдаги ПҚ-3723-сонли "Жиноят ва жиноят-процессуал қонунчилиги тизимини тубдан такомиллаштириш чора-тадбирлари тўғрисида"ти Қарори.

¹³ Ўзбекистон Республикасининг, 2019 йил 2 сентябрдаги ЎРҚ-561-сонли "Хотин-қизларни тазийқ ва зўравонликдан химоя килиш тўғрисида"ти Қонуни.

¹⁴ Ўзбекистон Республикасининг Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2025.

moment of receipt of the application and report on the crime¹⁵. For example, we can see that Article 15 of the Criminal Procedure Code stipulates that in each case where signs of a crime are found, the prosecutor, investigator, and inquiry officer are obliged, within their competence, to initiate a criminal case, identify the criminal event, the persons guilty of committing the crime, and take all measures provided for by law to punish them.

At the same time, the obligation of the head of the investigative body to carry out criminal prosecution is reflected in paragraph 8 of Chapter 2 of the Order of the Minister of Internal Affairs of the Republic of Uzbekistan dated June 12, 2017 No. 100 "On Approving the Instruction on the Procedure for Organizing Inquiry and Preliminary Investigation in the Internal Affairs Bodies of the Republic of Uzbekistan." In it, the competent authorities of foreign states are entrusted with sending criminal cases in the prescribed manner for the purpose of criminal prosecution, ensuring the investigation of criminal cases sent by the competent authorities of foreign states. Thus, the criminal prosecution function of the head of the investigative body implies the exposure of the person who committed the crime and the adoption of measures of procedural coercion against them.

Now, let's try to analyze the issue of the prosecution function of the head of the investigative body. The head of the investigative body participates as an accuser. A.M. Larin, E.B. Melnikova, and V.M. Savitsky understood accusation as "the formation, justification, and defense of a conclusion about the commission of a crime by a specific person"¹⁶.

In the sense of Article 6 of the Convention, prosecution is understood to mean not only the official notification of the prosecution by the European Court of Human Rights, but also other measures related to the suspicion of committing a crime that entails serious consequences or significantly affects the position of the suspect¹⁷.

Thus, depending on the stage of the criminal process, the function of criminal prosecution is first carried out by exposing the person who committed the crime, then manifests itself in the form of a suspect, and finally, in the form of an accusation. This function is usually considered by authorized officials as procedural activity aimed at finding a person guilty of committing a crime, which is ultimately aimed at ensuring the conviction of the criminal and the application of a just punishment to him.

Summarizing the above, it indicates to the prosecuting authorities the need to improve this right. In this regard, we propose to supplement part one of Article 15 of the Criminal Procedure Code with the following addition:

"Criminal prosecution on behalf of the state in criminal cases of public and private-public prosecution is carried out by the prosecutor, the head of the investigative body, the inquiry officer, the investigator, and officials of the bodies carrying out operational-search activities, pre-investigation checks."

We also propose to supplement part two of Article 37 of the Criminal Procedure Code with the following content:

"issuance of a conclusion on refusal to initiate criminal proceedings."

Having studied the powers of the head of the investigative body, we came to the conclusion that they reflect various articles of the Criminal Procedure Code. The procedural functions of the head of the investigative body have different classifications: 1) procedural control; 2) conducting a preliminary investigation; 3) ensuring the imposition of a lawful and justified accusation; 4) protection of human rights and freedoms; 5) criminal prosecution; 6) leadership; 7) organization of work; 8) verification of cases; 9) work direction; 10) giving written instructions; 11) ensuring legality.

¹⁵ Сухарева Н.Д. Прекращение уголовного преследования в стадии предварительного расследования: автореф. дис. ... канд. горид. наук. Иркутск, 2002. С. 7.

¹⁶ Ларин А.М., Мельников Э.Б., Савицкий В.М. Уголовный процесс России: лекции-очерки /под ред. В.М. Савицкого. М.: БЕК, 1997. С. 156.

¹⁷ Европейская конвенция по правам человека. Конвенция о защите прав человека и основных свобод г. Рим, 4.XI.1950 г. Измененная и дополненная Протоколами № 11 и № 14, вступившими в силу 1 июня 2010 г.

We consider the function of procedural guidance of the investigator's activities (coordination of the investigator's activities, directing the investigation) to be the main one;

- the function of supervising the investigator's procedural activity (verification and evaluation of evidence collected by the investigator; identification and correction of violations) as an addition;
- the function of criminal prosecution as an additional function (identification of persons who committed crimes in each case of establishing the corpus delicti);
- the prosecution function, as the main function of the head of the investigative body, does not express the essence of the procedural status of the head of the investigative body, but is a separate area of his activity, carried out along with other, more important functions.

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