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The Prosecutor's Waiver of Public Prosecution and its Legal Implications

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ABSTRACT: The article discusses the grounds, conditions, procedure and consequences of the statement of refusal of the charge and its consideration by the court of first instance.

KEYWORD: public prosecution, court, prosecutor, withdrawal of charges.

Introduction

The trial is the main and central part of the criminal process. During the trial that the question of guilt or innocence of a person is decided. At this stage, the principle of competition in the judicial process finds its full expression. Public prosecution is actions aimed at establishing the true circumstances of the case, recognizing the person who committed the crime as guilty, applying coercive measures to deprive him of certain rights and freedoms provided for by criminal law, or restricting them. During the public prosecution the prosecutor supports the accusation announced by the investigator and confirmed by the prosecutor, but doesn't indict against the person himself.

Discussion

According to the first part of article 409 of the Code of Criminal Procedure of the Republic of Uzbekistan, the prosecutor, participating in the consideration of cases of crimes by the courts of first instance, supports the public prosecution, takes part in the study of evidence, asks questions to the defendants, victims, witnesses, experts and other persons invited to the court, sets out its opinion on the application of the norms of the Criminal Code, on the qualification of the actions of the defendant and the assignment of the type and amount of punishment to him and on other issues to be resolved by the court. [1]

On June 30, 2020, the President of the Republic of Uzbekistan Sh.M.Mirziyoyev, at a meeting, initiated the introduction of a procedure that provides for the prosecutor's refusal to charge if mistakes are detected in the court session during the investigation process. [2]

On behalf of the President, amendments and additions were made to the second part of Article 409 of the Code of Criminal Procedure. In particular, if, as a result of the trial, the prosecutor comes to the conclusion that the data of the judicial investigation testify to the innocence of the defendant, he is obliged to refuse the charge and explain to the court the reasons for the rejection. The refusal of the prosecutor to charge entails the termination of the criminal case by the court on rehabilitating grounds.

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Refusal of charges is a rare procedural action in practice, which is mainly associated with an incomplete or one-sided preliminary investigation, incorrect application of the norms of the Criminal Code.

In addition, the norm in the criminal procedure legislation, which provides for the termination of a criminal case on the grounds of rehabilitation if the prosecutor refuses to charge, contradicts Article 421 of the Code of Criminal Procedure.

Because, this article states, if during the court session the grounds provided for in Article 83 and paragraphs 1, 2, 3 and 8 of the first part of Article 84 of this Code are established, the court continues the proceedings and, on the grounds provided for in Article 83, issues an acquittal , and on the grounds provided for in paragraphs 1, 2, 3 and 8 of the first part of Article 84 - a guilty verdict without imposing a punishment on the guilty person.

The acquittal by the court in all cases where the prosecutor withdraws the charges is contrary to the principle of the independence of the judiciary.

In our opinion, the legislation should have a logical connection between the grounds for the refusal of charges and the verdict of acquittal. After all, the main essence of the accusation is to confirm the guilt of a certain person, and the refusal of the accusation is the complete denial of a socially dangerous act defined by criminal law.

Article 83 of the Code of Criminal Procedure provides for the grounds for rehabilitation, which states that a person is found not guilty and is subject to rehabilitation if there is no event of a crime, there is no corpus delicti in his act, he is not involved in the commission of a crime.

In the Decree of the Plenum of the Supreme Court of the Republic of Uzbekistan "About the Judgment" dated May 23, 2014 No. 7, the grounds for issuing an acquittal were expanded. In particular, paragraph 9 of this resolution states that an acquittal for the absence of corpus delicti (paragraph 2 of article 83 of the Code of Criminal Procedure) is decided if the deed only formally contains signs of a crime, but due to its insignificance does not pose a public danger (article 36 of the Criminal Code); the act was committed in a state of necessary defense or extreme necessity (Articles 37, 38 of the Criminal Code); although the act was committed by the defendant, the criminal law does not recognize it as criminal (the harm was caused during the arrest of a person who committed a socially dangerous act (Article 39 of the Criminal Code), the execution of an order or other obligation (Article 40 of the Criminal Code), justified professional or economic risk (Article 41 of the Criminal Code), physical or mental coercion or threat (Article 411 of the Criminal Code), a person voluntarily refused to commit a crime (Article 26 of the Criminal Code), etc. [3]

When considering a criminal case, if the above circumstances are established, taking into account the corpus delicti in the person's actions and based on the principle of inevitability of responsibility, the prosecutor, without refusing to accuse, must continue to support the accusations and, in the accusatory speech, make a proposal to bring the perpetrator to criminal liability.

The denial of the charge attracts various consequences. For example, if the accusation is dropped, the victim as a separate procedural person is deprived of the opportunity to regulate his rights, in particular, the right to plead in court.

Article 19 of the Constitution of the Republic of Uzbekistan states that both citizens of the Republic of Uzbekistan and the state shall be bound by mutual rights and mutual responsibility. Citizens' rights and freedoms, established by the Constitution and the laws, shall be inalienable. No one shall have the power to deny a citizen his rights and freedoms, or to infringe on them except by the sentence of a court. [4]

In the legal literature, opinions are expressed that if the prosecutor refuses to accuse, the victim has the right to exercise accusatory powers, and the trial should continue without the participation of the prosecutor.

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However, it is difficult to agree with this opinion. Because the independent maintenance of the accusation by the victims casts doubt on the principles of competition and equality of the parties in the trial. Because the prosecutor is, first of all, a professional lawyer with special knowledge in the field of jurisprudence. Not every victim has the opportunity to hire a lawyer, even if the defendant is provided with lawyers with higher legal education.

The lack of legal literacy, the limited ability to combine the main work or study with participation in court hearings is one of the main problems of the victim in supporting independent prosecution.

According to Dovudova D., the termination of the criminal case in the event that the prosecutor refuses to accuse, indicates that the interests of the victim (civil plaintiff) are not taken into account. Therefore, it is proposed, in such cases, first of all, to take into account the opinion of the victim, if the victim objects to the termination of the case, the court will consider the criminal case on a general basis. [5]

The mechanisms of control and verification of the prosecutor's decision to dismiss the prosecution are not regulated by law. If, during the trial, the actual circumstances in the materials of the criminal case do not coincide with the opinion of the prosecutor, the public prosecutor must inform the prosecutor who approved the indictment about this and, together with him, take all measures aimed at ensuring the legality and validity of the accusation.

A prosecutor who disagrees with an acquittal issued in connection with the waiver of state charges has the right to file a protest against the court decision in an appeal procedure.

The prosecutor's waiver of prosecution is governed by a branch order of the Attorney General. In particular, in paragraph 7.4 of the order of the Prosecutor General of the Republic of Uzbekistan dated November 27, 2015 No. 126 “On further improving the effectiveness of the participation of the prosecutor in the consideration of cases in criminal courts”, unquestioningly comply with the requirements of the law on the waiver of charges in the case when, in the trial, verified evidence the defendant's innocence has been proven, and the prosecutor supporting the state prosecution is convinced of this.

Some scholars have criticized the institution of denial of public prosecution. For example, according to K.A.Talalaev, “the prosecutor’s institute of refusing to accuse is one of the weak points of the criminal procedure legislation, and this procedural action of the public prosecutor is contrary to the requirements of the criminal procedure law.” [6] On the other hand, the author stated that several proposals have been put forward in the literature to eliminate these cases of violation of the law. In particular, it is proposed to introduce mechanisms of judicial control over the decision to waive public prosecution [7], to establish criminal liability for the prosecutor's unlawful release of the defendant from liability by waiving charges. [8]

At present, the question of the specific period of application of the institution of waiver of charges in the process of judicial review remains open. The term for the implementation of this procedural action in the legislation of Uzbekistan is not regulated.

The Decree of the Plenum of the Supreme Court of the Republic of Belarus dated September 26, 2002 No. 6 “On Certain Issues of the Application of the Criminal Procedure Law in the Court of First Instance” provides that charges can be dropped before or during the trial, or during the debate of the parties. [9] In the decision of the Constitutional Court of the Russian Federation, a full or partial waiver of the charge is allowed only after the completion of the study of the materials of the criminal case. [10]

Results

We can fully agree with the experience of the Russian Federation, and we can partially agree with the experience of the Republic of Belarus. Because before a criminal case goes to court, it goes through the stage of preliminary investigation, including the stage of checking by the prosecutor for the validity of the

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decisions taken during the investigation. Consequently, the prosecutor, in the process of familiarizing himself with the case materials before the start of the trial, cannot give a legal assessment of the evidence to be established during the trial, in turn, he will not be able to make a final conclusion on the case.

For this reason, we consider it necessary to enshrine a norm in the criminal procedure legislation that ensures the right of the prosecutor to withdraw charges only after the completion of the judicial investigation.

The prosecutor's decision to drop the charge must be submitted in writing and must set out the reasons for the refusal. It must contain specific facts and information that testify to the innocence of the defendant, revealed during the judicial investigation. This requirement is reflected in the Order of the General Prosecutor's Office of the Republic of Belarus dated 09.12.2008 No. 71 "On measures to improve the quality of maintaining state prosecution", according to which, when refusing to charge, the prosecutor must substantiate the reasons for the denial in writing. [11]

In our opinion, it is not enough for the prosecutor to give a written form of refusal of the charge. In this case, the public prosecutor must make a reasoned decision. After all, the prosecutor's waiver of charges is a procedural action, and fixing this action with a procedural act helps the court to make a lawful, reasonable and fair decision in the future, and serves as the most basic element in distinguishing between actions to maintain charges and waive accusations.

The prosecutor in his activities, including in the process of making a decision to drop charges, may make a mistake. Some scholars have suggested giving the court the right to appeal to the prosecutor who approved the indictment, or to a higher prosecutor in case of disagreement with the dismissal of the charge. [12]According to another approach, that is, according to the opinion of the scholar P.K.Barabanov, it is expedient for the public prosecutor to independently inform the supervising prosecutor of his opinion on the criminal case and to coordinate his further actions without the intervention of the court. [13]

The first variant of checking the legality of the decision of the public prosecutor, in our opinion, contradicts the ongoing judicial reforms in our country. Since the court is obliged to decide on the guilt of a person on the basis of evidence, it is not within the competence of the court to assess the position of the prosecutor from the point of view of the prosecution, even if it is erroneous.

Conclusion

In conclusion, we can say that further expansion of the population's access to justice within the framework of the principle «New Uzbekistan - a new court» requires accelerating the reform of the judicial and legal system, the introduction of advanced international standards in the field.

In the process of these reforms, the improvement of the sphere of public prosecution, which is an integral part of the criminal procedure legislation, and the timely correction of gaps and shortcomings in legislative acts, will lead to the adoption of fair judicial decisions and the strengthening of public confidence in the judicial system.

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