



ENSURING TRANSPARENCY IN CRIMINAL PROCEDURE

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Abstract

This article examines the problems of ensuring transparency in criminal proceedings, ensuring transparency in the preliminary investigation and inquiry, the order of transparency in court proceedings from the point of view of researchers who have conducted research in this area. The author also analyzed the concepts of transparency in criminal proceedings, such as transparency, openness, and openness, and at the end made suggestions and recommendations for improving the legislation.

Keywords: transparency, openness, openness, secrecy of investigation.

Introduction

Ensuring transparency and openness in criminal proceedings has become an important means of guaranteeing individual rights in today's world. In particular, ensuring transparency and openness of judicial proceedings, strengthening the institution of public participation in criminal proceedings has become one of the main directions of reforms in this area as a mechanism to ensure reliable guarantees of individual rights and freedoms in criminal proceedings. This issue is also specifically mentioned in the decisions of the European Court of Human Rights.

The word "transparency" is also widely used in criminal proceedings, generalizing the terms "openness" and "transparency". According to the Uzbek dictionary, "transparency" means openness, openness, "openness" means openness, clarity, transparency [1]. Transparency means openness, communication and accountability from the humanitarian and social point of view, social transparency means the opportunity for every member of society to receive accurate information about the society, and business transparency means providing honest information about the enterprise to authorized stakeholders.

The issue of transparency in criminal proceedings is constantly being studied by national and foreign procedural scholars. According to Brian A. Jackson, transparency is a means of bringing law enforcement agencies and citizens closer to each other, leading to the formation and growth of public confidence in the representatives of this body [2]. Other sources describe it as one of the ways to control the activities of law enforcement agencies [3]. If A.V. Smirnov studied the





transparency of justice as a necessary condition for civil society control over the proceedings [4]. N.V.Sych argued that transparency has not only legal but also political significance [5]. In general, transparency helps to effectively address the challenges of criminal procedure law by strengthening the two-way link between citizens, civil society institutions and the justice system. Based on the above, it can be concluded that transparency in criminal proceedings is a system of rules enshrined in law that allows any interested person to obtain information in criminal proceedings without prejudice to the rights and legitimate interests of others.

The International Covenant on Civil and Political Rights (Article 14) also applies to open court proceedings, according to which everyone has the right to demand that his or her case be heard in an open and fair trial. This openness may be restricted only in cases involving public order, ethics, private life or state secrets. [6]. The European Convention for the Protection of Human Rights and Fundamental Freedoms has applied openness and transparency to proceedings in a fair trial (Article 6). Ensuring the transparency of the judiciary alone will not solve the problem of transparency in criminal proceedings. It is in the pre-trial period that procedural actions concerning the rights and freedoms of citizens are carried out by law enforcement agencies. Therefore, pre-trial criminal proceedings must also comply with generally accepted international standards, as well as the active work of public oversight. Unfortunately, this issue has been studied by a small number of procedural scholars in science.

In our national criminal procedure legislation, the issue of transparency also applies to the activities of the courts. One of the general conditions of the preliminary investigation is that the investigator has the right to admit that all the information in the criminal case or the information in a certain part of it is not disclosed. on this basis, he may obtain a receipt from the persons participating in the investigation or present at the investigation or acquainted with the materials of the investigation, stating that they are obliged not to disclose the information available in the case without his permission (Article 353 of the Code of Criminal Procedure). This means that information about the investigation will be made public only with the consent of the official conducting the investigation. This shows that the issue of ensuring transparency in the initial investigation depends on the will of the person responsible for the criminal case.

In most sources, procedural scholars have conducted research to increase the transparency of the trial process, rather than the initial investigation or inquiry. In particular, B. Jamolov noted that transparency is related, firstly, to the direct participation of the public and the media in the judicial process, and secondly, to the procedure for announcing court decisions [7]. According to D. Aripov, the





transparency of the judiciary is applied in procedural law only as a principle of litigation, and "transparency" is the result of openness and transparency, which means the elimination of corruption in the judiciary, the operation of courts only in accordance with the law. it is a matter of having reliable information about the activities of the courts through the introduction of information and communication technologies in its activities and ensuring public participation [8]. A.A. Tarasov expressed a similar opinion on the difference between the concepts of transparency and openness [9]. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On ensuring the transparency of court proceedings and the right to information on the activities of courts" [10] linked the transparency of the trial to the fact that non-participants in the proceedings, including members of the media, were given the opportunity to attend the trial. In our criminal procedure legislation, there is no explanation of the obvious differences between these concepts.

The issue of ensuring transparency in criminal proceedings has not lost its relevance today around the world, as well as in Uzbekistan. This issue is not enshrined in the Code of Criminal Procedure as a separate principle. We do not see this rule in the general terms of the preliminary investigation, inquiry, or trial. The reason for this can be explained by the secrecy of the investigation. It should be borne in mind that while the state seeks to ensure the transparency of justice, on the other hand, it is also obliged to limit transparency in the interests of the community or individuals. Exactly what is the secret of the investigation and what it covers is not clearly regulated in our legislation. A.V. Krylov focused on this issue and explained what the secrecy of the investigation would cover. [11]:

- 1) Information on the formation of investigative versions;
 - 2) Evidence obtained as a result of investigative actions conducted without the participation of the suspect or accused;
 - 3) Information on security measures for process participants;
 - 4) Information on investigative tactics;
 - 5) Information on the identity and place of residence of the officials conducting the investigation;
 - 6) Individual witness, information about victims;
 - 7) Information about relatives and friends of the participants in the process.
- In addition, L. Cherepanova included trade secrets and trade secrets in information that could not be disclosed [12]. In addition to the views of these scholars, it is important to take into account the balance of interests of the citizen and the person responsible for the criminal case in ensuring transparency.



The disclosure of a crime and its investigation may require that the investigation and the waiver of the prosecution by the public prosecution authority in certain circumstances keep the investigation confidential. Such activity leads to the problem of lack of information or data. This type of tactical action requires quick action. Compliance with the secrecy of the investigation is primarily a matter of ensuring the confidentiality of information about the private lives of the participants in the proceedings that may be related to the crime the honor of these persons until the judgment of the court enters into force to maintain its dignity and to ensure the quality and efficiency of the investigation. At the same time, it is the secret of the investigation that the abuse of power can create favorable conditions for the use of methods of obtaining evidence in criminal cases that are not allowed by law. The existence of an investigative secret is an opportunity not to disclose the procedural actions taken by the investigative authorities, which allows them to engage in activities that cannot be controlled (beyond departmental, prosecutorial and judicial control). This, in turn, leads to a growing negative public perception of law enforcement. In our opinion, the issue of transparency in criminal proceedings should be extended to the pre-trial period of law enforcement practice on the following issues:

- The availability of limited procedural documents related to their rights and legitimate interests by the participants of the proceedings;
- Publication of a certain part of the information on the investigation in the mass media in the amount and in the manner prescribed by law;
- A person who considers that his / her constitutional rights have been violated may file a complaint to the court and be given the opportunity to personally participate in the consideration of this complaint.

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