

Development Of The System Of Verification Proceedings In The Criminal Process Of The Republic Of Uzbekistan

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Annotation: The article is devoted to the modern system of verification proceedings in the criminal process of the Republic of Uzbekistan from 1984 to the present. For each historical stage, the most significant features characterizing the instantiation relationship and the main features of verification proceedings are formulated. In conclusion, proposals are made for further improvement of the system of modern verification proceedings, based on trends in the development of criminal procedural legislation

Key words: verification proceedings, institutional communication, appeal of the verdict, appeal, cassation, supervision.

In modern conditions, the formation of an effective mechanism for ensuring individual rights and freedoms is of fundamental importance for society and the state. A strong civil society places the recognition, observance and protection of human and civil rights and freedoms by the State as the main guideline.

It is for this purpose that the State establishes a number of institutions through which the legal status of an individual is regulated and implemented, methods and measures of influence on it are determined, and finally, legal and other social guarantees for the realization and protection of personal rights and freedoms are established. In order to fulfill its main function – the protection and protection of citizens' rights, a state governed by the rule of law must have an effectively functioning system of bodies, the essence of a number of state legal institutions and the order of their activities.

In the strategy of actions for the further development of the Republic of Uzbekistan [1], within the framework of the second direction "Priority directions for ensuring the rule of law and further reform of the judicial and legal system", the task of ensuring guarantees of reliable protection of citizens' rights and freedoms is separately indicated.

At the same time, it must be recognized that human rights and freedoms cannot be fully ensured without fundamental modernization and reform of the legal system.

The study of the formation and development of the system of verification proceedings in criminal proceedings seems relevant at the present time, since the reform of this system has been ongoing

for more than ten years. To date, it cannot be said that this reform has been completed, since the existing system of verification proceedings cannot be recognized as fully effective. In this regard, an analysis of the history of the development of the verification proceedings system will allow us to outline ways to further modernize the instantiation link between appeal, cassation and supervision in criminal proceedings.

In the Statute of criminal proceedings of 1864, the system of verification proceedings included two instances: appeal and cassation. [4, p. 120]. In the appeal proceedings, the sentences that were not final and did not enter into force were checked. The court of appeal was allowed to conduct investigative actions, the same as the court of first instance, for the appealed court decision, the court of appeal passed a verdict.

The emergence of a system of verification proceedings in criminal proceedings should be associated with the adoption of judicial statutes in 1864. Despite the fact that the institution of verification of sentences existed in earlier periods and was regulated by earlier regulations, the proceedings never developed.

The verdicts of the courts of appeal were considered final and could only be reviewed in cassation. At the same time, a strict instantiation link was provided between the appeal and cassation: if the verdict was not appealed by the party on appeal, then filing a cassation appeal was not allowed, except in cases when the verdict was treason by the court of appeal (Article 907 of the Criminal Code).

In the cassation procedure, the verification was carried out in the cassation departments of the Senate. No investigative actions were allowed in the court of cassation instance, the verdict was checked only based on the materials of the criminal case. At the same time, the Senate was not empowered to impose new sentences, and if violations of the laws were detected, it could only, as a general rule, cancel the verdict and send the case for a new trial to the court of first instance. The Senate's instructions were considered mandatory, and if the lower court fulfilled them during the retrial of the criminal case, then the verdict could not be appealed again for these reasons (Article 930 of the Criminal Code).

After exhausting the possibilities of appeal and cassation appeal, the verdict entered into force and, as a rule, was not subject to further review or appeal. An exception was made only for the resumption of criminal cases, which were possible if there was information about any factual circumstances that meant that the resolution of the criminal case on the merits was incorrect (Articles 934-940 of the Criminal Code).

In addition to the system of verification instances fixed in the UUS, there was also a special form of correction of judicial errors. This form was sometimes called supervision in the scientific literature [5, pp.527-530] and was used if a higher court became aware of violations of the law committed by a lower court. Moreover, these violations of the law were supposed to affect public interests, and in this case a higher court could overturn an illegal sentence (Article 250 of the Institution of Judicial Institutions).

Thus, describing the system of verification proceedings that developed as a result of the judicial reform of 1864, the following essential features can be distinguished:

1) in the system of verification productions, ordinary (ordinary) verification productions and exceptional (extraordinary) verification productions were clearly distinguished. The first group included appeal and cassation proceedings, since they began exclusively at the will of the parties, were limited to a certain period and only after the expiration of this period the sentence was considered to have entered into force;

2) there were clear distinctions between appeal and cassation as methods of verifying a court decision that had not entered into force according to the object of verification (the list of court decisions that could be verified in each instance), the subject of verification (those requirements for a judicial act that were checked in each instance) and the instantiation connection: as a rule, in the cassation It was the sentences handed down by the court of appeal that were checked.;

3) after the court decision entered into force, any possibility of further appeal was excluded, however, if the most significant violations of the law were committed, they could be corrected on the initiative of higher authorities, but which can be considered a kind of extraordinary verification procedure

The next stage in the development of the system of verification proceedings in criminal proceedings is associated with the October Revolution of 1917 and the change in the judicial system of the Soviet state. Bolshevik legislation immediately resolutely rejected the appellate instance as a way to correct judicial errors, since, as noted by scientists, the court of appeal only belittles the importance, role and responsibility of the court of first instance in passing judgments [3, pp. 40-41].

But the refusal of the court of appeal did not mean that Soviet legislation excluded any possibility of verifying the verdict handed down by the court of first instance. Decree No. 1 "On the Court" already mentioned that cassation of sentences is allowed. However, there was no specific legal regulation of the activities of a higher court to verify a verdict that had not entered into force, and this act did not contain. It was enshrined in subsequent acts on the judiciary and finally formalized in the criminal procedure legislation. The court of cassation instance could check the legality and validity of the sentence, the fairness of the imposed punishment. Investigative actions were not allowed in the cassation proceedings, the verification of the verdict was carried out only by written materials.

After the end of the cassation proceedings or the expiration of the time limit for cassation appeal of the verdict entered into force, and its further verification was carried out only in a supervisory manner. Moreover, the new judicial supervision took on an essential feature of pre-revolutionary supervision - its initiation did not depend on the will of the parties. That is why neither Soviet legislation, nor judicial practice, nor doctrine has ever considered the supervisory procedure to be a third instance. For example, M.S. Strogovich wrote: "the supervisory authority is not the third judicial instance, which the case goes through in the order of its usual procedural movement, it checks the case only when, upon the entry into force of the sentence, the authorized official finds it necessary to review the sentence that has entered into force" [3, p. 259].

D.M.Mirazov believes that it is necessary to distinguish between the concepts of "judicial supervision" and "judicial control". Thus, in his opinion, the concept of judicial supervision includes the verification by higher courts of judicial decisions of lower courts in cassation, supervisory and appeal proceedings, as well as the provision by the highest court of guidance to lower courts and other law enforcement agencies on criminal proceedings. [8, p.52].

The reason for the commencement of proceedings in the court of supervisory instance was a supervisory protest brought by the relevant officials of the prosecutor's office and the courts. In addition, in supervisory proceedings, verification could be carried out repeatedly, starting with the presidium of the supreme courts of the constituent entities of the federal republics, ending with the Plenum of the Supreme Court of the USSR, which cannot be considered fully effective.

Therefore, the Soviet period of development of the sentencing review system demonstrated both the presence of common trends with the pre-revolutionary periods and the creation of new special institutions. The Soviet model of cassation is, in fact, a hybrid of pre-revolutionary appeals and cassation. The Soviet legislator borrowed from the appellate form of appeal the subject of verification and the grounds for the cancellation of the verdict, and from the cassation form - legal means and procedural decisions. [5, p. 39].

The Institute of Soviet Supervision was also a hybrid of the pre-revolutionary institute of supervision (in the form of initiation of supervisory proceedings) and the Soviet cassation. Considering the above about the Soviet cassation, it can be concluded that the institution of review of sentences that have entered into force by way of supervision is a set of signs of pre-revolutionary supervision, appeal and cassation. In other words, the Soviet system of instances, undoubtedly original in its content, has the basis for its origin in institutions first created by judicial statutes.

Thus, it is necessary to highlight the following most significant features of the Soviet system of verification proceedings in criminal proceedings:

- 1) the Soviet legislator abandoned the two-instance system of verifying court decisions before they entered into force: the Soviet cassation combined the signs of pre-revolutionary appeal and cassation: not only the legality of the verdict (as in classical cassation), but also the validity and fairness, however, the verdict was checked exclusively on written materials of the criminal case without direct investigation evidence;
- 2) after the entry into force of the sentence, it could only be verified in supervisory proceedings, but as such there was no supervisory appeal, since supervisory proceedings, but as such there was no supervisory appeal, since supervisory proceedings were initiated only by bringing a supervisory protest by an official of the prosecutor's office or courts.

In the supervisory proceedings, the same requirements for the verdict were checked as in the cassation (legality, validity and fairness), and the verification was carried out in the same way as in the cassation proceedings - exclusively based on written case materials. The undoubted advantage of Soviet supervision in comparison with the pre-revolutionary one should be recognized that the procedure for supervisory proceedings was regulated in detail by criminal procedure legislation. At the same time, it should be noted that through such a settlement, the possibility of multiple verification of a sentence that has already entered into force was consolidated, while such verification was not initially limited by any period.

The events of the late twentieth century on a fundamental change in the legal system could not but affect the criminal process, changing not only its principles, but also the system of instances under consideration. At one time, the Concept of Judicial Reform [2, p. 5] focused on the complete rejection of the Soviet institutions of cassation and supervision and a return to pre-revolutionary appeal and cassation. However, the relevant changes to the Legislation were not made in the 90s of the twentieth century, and were not reflected in the original version of the CPC of the Republic of Uzbekistan.

In order to further democratize and liberalize the judicial system, improve the efficiency of the court, law enforcement and control bodies, increase public confidence in the justice system, ensure the stability of the law in society and strengthen the rule of law, the President of Uzbekistan signed Law No. ZRU-869 dated 09/27/2023 "On Amendments and Additions to the Criminal Procedure Code of the Republic of Uzbekistan in connection with with the improvement of the institute for verifying the legality, validity and fairness of judicial decisions" [6].

Now you can file an appeal (protest) against the verdict within 10 days (previously – 20 days).

The CPC is also supplemented by a chapter providing for the procedure for reviewing cases in an audit procedure.

So, a complaint can be filed in the revision procedure against sentences, definitions:

- courts of first instance, considered on appeal or cassation, in accordance with the relevant revision procedure;
- courts of appeal or cassation, the appropriate audit instance.

An audit review of a conviction or a court ruling, if the complaint or protest raises the issue of worsening the situation of the convicted person, as well as an acquittal or a ruling on termination of the case, is allowed only within a year from the date of its entry into force.

Evidence that has not been examined by the courts of previous instances is accepted by the court, while the person must explain for what reasons, independent of him, he did not have the opportunity to present this evidence to the court of the first, appellate or cassation instance.

The court, having considered the criminal case in an audit procedure, makes one of the following decisions based on the results:

- on leaving the verdict, the ruling of the court of first instance, appeal or cassation instance unchanged, and the complaint without satisfaction;
- on the cancellation of the verdict, the ruling of the court of appeal or cassation instance and the abandonment of the verdict, the ruling of the court of first instance;
- on the cancellation of all court decisions taken in the case and the imposition of an indictment or acquittal;
- on the cancellation of all court decisions taken in the case and the termination of the case;
- on the cancellation of all court decisions taken in the case and the referral of the criminal case to the court of first instance;
- on changing the verdict, ruling of the court of first instance, appeal or cassation instance;
- termination of the proceedings in the revision procedure, in case of withdrawal of the complaint, protest.

In addition, from now on, when considering a criminal case on appeal, cassation, or revision, the court does not limit itself to the arguments of the complaint or protest and checks the case in full with respect to all convicts, including those who have not filed a corresponding complaint, or in respect of whom a complaint (protest) has not been filed. Such an organization of the verification proceedings system will correspond to the logic of building judicial instances in criminal procedure legislation, since each verification instance will fulfill its role in the general system of verification proceedings.

List of literature.

1. On the Development Strategy of the new Uzbekistan for 2022-2026, Decree of the President of the Republic of Uzbekistan, dated 01/28/2022 No. UP—60.A
2. The concept of judicial reform//On measures to further reform the judicial system, strengthen guarantees of reliable protection of citizens' rights and freedoms// October 21, 2016 PF-4850// <https://lex.uz/acts/3050491>
3. Strogovich M.S. Verification of the legality and validity of judicial acts. M: Publishing House of the Academy of Sciences, 2020. 319 p.
4. The Statute of Criminal Proceedings// Russian legislation of the X-XX centuries. Vol.8, M., 1991 From 120-251.
5. Foynitsky I.Ya. Course of criminal justice. Vol.2// General ed. A.V.Smirnov, St. Petersburg, Alpha, 2016. p.606.
6. https://www.norma.uz/novoe_v_zakonodatelstve/revizionnyy_poryadok_novaya_procedura_peresmotra_prigovorov
7. Golovko L.V. The state and its criminal proceedings: Monograph. M.: Publishing House "Gorodets", 2022. — 464 p.
8. Mirazov D.M. Theoretical, organizational and procedural aspects of improving control and supervision of the activities of preliminary investigation bodies: Abstract.diss...Doctor of Law.sciences. –T., 2016.–p. 52.
9. Ulug‘bek, A., & Otabek, A. (2023). Content, Positive and Negative Characteristics of the Digital Economy. International Journal of Business Diplomacy and Economy, 2(5), 230-235.