

# IMPORTANCE OF JUDICIAL INVESTIGATION IN JUSTLY IMPOSING SENTENCE ON A PERSON

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**Abstract:** This article exercises the importance of judicial investigation in ensuring justice and the role of reviewing the evidence thoroughly, completely, comprehensively and impartially in imposing sentence.

**Keywords:** criminal procedure, court instance, investigate activity in court instance,

## ЗНАЧЕНИЕ СУДЕБНОГО СЛЕДСТВИЯ В НАЗНАЧЕНИИ ЛИЦУ СПРАВЕДЛИВОГО НАКАЗАНИЯ

**Аннотация:** в данной статье исследованы значение судебного следствия в обеспечении справедливого правосудия, роль всесторонней, полной, тщательной и справедливой проверки доказательств при назначении наказания.

**Ключевые слова:** уголовный процесс, следствия в суде, судебные инстанции, наказания лицу

ШАХСГА НИСБАТАН АДОЛАТЛИ ЖАЗО  
ТАЙИНЛАНИШИДА СУД ТЕРГОВИНИНГ АҲАМИЯТИ

**Аннотация:** мазкур мақолада суд терговининг одил судловни таъминлашдаги аҳамияти, далилларни ҳар томонлама, тўлиқ, синчковлик билан ва холисона текширишнинг жазо тайинлашдаги ўрни ўрганилган.

**Калит сўзлар:** жиноят процесси, суд тергови, суд инстанциялари, шахсга жазо тайинлаш.

Nowadays, particular attention is being paid to increasing role and importance of courts in protecting citizens' rights, further expansion of guarantees for the protection of human rights and freedoms by the court, ensuring the equality of parties and transparency in the court as one of the priority directions of the judicial-legal reforms being extensively conducted in the Republic of Uzbekistan.

The role and importance of the court as the sole body administering criminal justice has considerably been elevated by the Constitution of the Republic of Uzbekistan. Guiding rules including core guarantees of human rights and freedoms possess an important place in considering criminal cases in the court. The independence of judges and their obedience solely to law, inadmissibility of any form of interfering the work of judges in administering justice, separate activity of the court from the legislative and executive powers are reflected in the judicial-legal reforms that have been conducted and currently being carried out. The 26<sup>th</sup> Article of the Constitution of the Republic of Uzbekistan defines the importance and necessity of the court as an institution defending human rights by stating that anyone accused of a crime is deemed to be innocent until his guilt is lawfully proved in open court proceedings that afford the accused every opportunity for defense.

During the trial, the court, reviewing a criminal case, decides whether the person is guilty or not guilty of the commission of the crime, and whether she/he should be punished or not. Trial is the main stage of criminal

proceedings.<sup>1</sup> It is indirectly connected to the objective of trial, the scope of issues reviewed in the trial, aspects of reviewing the case and the conclusion. The trial includes the sequence of procedural actions aimed at aimed at comprehensive, thorough and objective examination of the materials of the criminal case and establishing the truth by the court. These procedural actions may be defined by law or established by the court. Each of them possesses a particular goal and strict rules are instituted in the Criminal Procedure Code of the Republic of Uzbekistan to conduct the procedural actions. The judicial investigation, therefore, is the most complex and voluminous part of the trial.<sup>2</sup>

After all required procedural actions have been carried out in the preparation stage of the trial, judicial investigation – the main part of the trial commences. In a stage all evidence collected are examined and a basis for judgement.<sup>3</sup> It should be noted that the examination of the evidence by the court is not carried out in all stages of the trial, but only in the judicial investigation. In other stages, either necessary procedural conditions are established to examine the evidence (preparation stage) or evaluation actions of the evidence examined in judicial investigation are performed to come the final conclusion whether the defendant is guilty or not (judicial pleading, last plea by defendant, making a judgement).

Judicial investigation should not be considered as a stage aimed at re-examining the materials relating to the case which has already checked in preliminary investigation.<sup>4</sup> In fact, it is not the same as preliminary investigation and during judicial investigation, every actual instance in the case is analyzed independently

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<sup>1</sup> Селедкина Н.А. Судебное следствие в российском уголовном процессе. Диссертация на соискание ученой степени кандидата юридических наук. Екатеринбург. 2005. -С.14.

<sup>2</sup> К.Ф.Гуценко Уголовный процесс. Учебник. – М.: Изд-во «Зерцало». 2000. -С.362

<sup>3</sup> Жиноят процесси: Дарслик (Махсус қисм). З.Ф. Иноғомжонови умурий таҳрири остида. -Т.: “Адолат” 2007. –Б. 181

<sup>4</sup> К.Ф.Гуценко Уголовный процесс. Учебник. — М.: Изд-во «Зерцало». 2005. -Ст. 262.

except the examination of all the evidence collected in the pretrial proceedings. The evidence recognized as admissible in the preliminary investigation is of a recommendatory character for the court and all procedural actions performed in the pre-trial investigation should be aimed at creating necessary conditions to administer justice. Judicial investigation has particular aspects such as being independent from the results of the preliminary investigation and being new.

Preliminary investigation is a wider process than judicial investigation due to the fact that a huge number of procedural actions related to identifying, collecting, reviewing and evaluating the evidence are conducted in this stage. Examining all feasible options, investigator are obliged to involve and investigate colossal amount of evidence some of which may be unnecessary and excluded from the scope of examining afterwards. The goal of judicial investigation is not only reviewing the evidence and other materials, but examining the evidence presented by the participants of the trial or collected with the court's initiative either, and creating a condition to establish the truth. In other words, the court conducts its own investigation on the criminal case during the judicial investigation.

The fairness of the punishment applied depends on how properly the trial is conducted. At the same time, the efficiency of justice is considerably effected by how thoroughly, completely and comprehensively instances related to the case are examined.

Judicial investigation is a procedural stage examining the evidence independently and constructively.<sup>5</sup> It is an important part of the trial and based on an active participation of the parties possessing evidences. The evidence, which is not involved in by the court or parties and not discussed in the judicial investigation, is not recognized as a ground for the sentence and even invalid

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<sup>5</sup> Жиноят процесси: Дарслик (Махсус қисм). З.Ф. Иноғомжонованинг умумий таҳрири остида. -Т.: "Адолат" 2007. -Б. 127.

as an evidence. The crucial aspect of judicial investigation is that the basis for the final judgement is established in this process. Hence, the legality and justification of the sentence is dependent on the quality of the judicial investigation conducted.

It is obvious that the main subject is the judge(s) in the process of the judicial investigation. Therefore, the judge should constantly enhance her/his professional skills to conduct procedural actions related to the preparation of the case for the trial and presiding in the trial. Because complete and impartial examination of every circumstance of the case, the establishment of the truth and the moral aspect of the trial is contingent on the judge's strict observance all requirements of the law, his/her thoughtful and skillful leadership.

According to a Russian scholar – S.B.Rossinskiy, judicial investigation is a stage of the court proceedings in which the culpability of the defendant, the incriminated offense and other aspects important for the case are resolved, and the court examine the evidence presented by parties and acquired by the court itself in this phase.<sup>6</sup> It should be noted that judicial investigation is a complex process that several subjects participate in and is developed by these subjects' action or omission. Here, the court possess the most crucial and decisive role and the court should examine the evidence presented by the parties. From another Russian scholar's – V.P.Bojyev's point of view, the judicial investigation is the main part of the trial. During the judicial investigation, all the evidence, which could be the basis for the final judgment with the attendance and initiative of the accuser and defense, is checked and examined.<sup>7</sup> Logically, the process of reviewing the case in the trial ends up establishing one of the following two contradictory decisions: the accusation or acquittal. Specifically, either the defendant is recognized

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<sup>6</sup> С.Б.Россинский. Уголовный процесс России. Курс лекций. – 2-е изд., исправл. и доп. – М.: Эксмо, 2008. -Б. 397

<sup>7</sup> В.П.Божьева Уголовный процесс. Учебник. – 2-изд. перераб. и доп. – М.: Высшее образование, 2009.-Б. 336.

as guilty of the crime or s/he is acquitted. Therefore, participants in the defense-side (defense counsel, defendant, civil respondent, and their representatives) try to take an advantage of the evidence, which proves the innocence of the defendant or may mitigate the defendant's criminal liability. On the contrary, participants in the accusing side (state accuser, victim, public accuser and their representatives) try to ensure the principle of liability for the commission of a crime. In accordance with V.Popov, the essence of judicial investigation consists of the objective, strict order, participants of the judicial investigation and criminal-procedural proving.<sup>8</sup> It is obvious that proving is a determining process in which all the circumstances, which is important for resolving properly the case based on the evidence - i.e. whether the crime was committed, or whether the defendant is guilty of committing the crime. In our opinion, the essence of judicial investigation is reflected in an independent, oral and indirect examination of the evidence.

According to the 439<sup>th</sup> Article of the Criminal Procedure Code of the Republic of Uzbekistan, the judicial investigation begins with the state prosecutor's reading out the charges brought against the defendant and set in the conclusion of the indictment. The court is not limited only by the scope of the preliminary investigation materials, but may recognize new facts identified during the process of examining the circumstances of the case as the evidence. For this purpose, the courts utilize the methods defined in the 87<sup>th</sup> Article of CPC of the Republic of Uzbekistan. The court evaluate the evidence acquired in the judicial investigation by examining it thoroughly, completely, comprehensively and impartially, and with the observance of the law. In accordance with Article 22 (CPC), the courts could use only the information discovered, checked, and evaluated in accordance with the procedure envisaged by the Criminal Procedure Code of the Republic of Uzbekistan

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<sup>8</sup>В.М.Попов. Судебное следствие: проблемы оптимизации..Диссертация на соискание ученой степени кандидата юридических наук. 2001. Б.36.

for the establishment of the truth.<sup>9</sup> The reliability of the parties presented some evidences should not effect on evaluating them positively. Recognizing or not recognizing the information related to the case as the evidence is completely the court's independent competence and it should not be interfered or effected by anyone. In addition, the sentence should be based on the evidence examined in the trial and reflected in the protocol of the court.

Justice consists of judicial actions being performed step-by-step and conducted by the trial. Judicial investigation is the process is carried out after the stage of preparation and before the court hearing with the participation of the parties, complete observance of the criminal procedural principles. Every action of the most active participant – the judge in this stage might play decisive role and influence on the defendant's future life, his/her interests and the interests of the society.

Hence, ensuring the principle of the liability for the commission of a crime and the fairness of the punishment is dependent on how properly the trial is conducted. The efficiency of justice is considerably effected by how thoroughly, completely and comprehensively instances related to the case are examined during the judicial investigation.

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<sup>9</sup>“Суд ҳукми тўғрисида”ги Ўзбекистон Республикаси Олий суди Пленумининг қарори. <http://lex.uz>

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