



## **CERTAIN ASPECTS OF TERMINATION OF CRIMINAL CASES ON NON-REHABILITATION GROUNDS**

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<b>Article history:</b>	<b>Abstract:</b>
<b>Received:</b> May 10 <sup>th</sup> 2022 <b>Accepted:</b> June 10 <sup>th</sup> 2022 <b>Published:</b> July 22 <sup>th</sup> 2022	This article analyzes some of the foundations of the institution of terminating the criminal case without solving culpability issues by implementing the advanced foreign experience in the criminal procedural legislation at the stage of judicial reforms and studies the problems related to the application of these cases. In the article, based on the views and ideas put forward by scientists, the ground of terminating the criminal case without solving culpability issues was analyzed through scientific, theoretical, practical, and legal norms. Based on the results of the analysis, appropriate suggestions and recommendations were developed to improve the institution of terminating the criminal case without solving culpability issues.

**Keywords:** culpability issues, termination of the criminal case, rehabilitation, termination of the criminal case on non-rehabilitation grounds, term of prosecution, suspect, accused, defendant, victim, victim's complaint.

### **INTRODUCTION**

Today, in the process of judicial reforms, the liberalization and improvement of the criminal procedure legislation are fundamental functions. To develop and implement completely new priorities for the improvement of criminal and criminal-procedural legislation, the Concept of Improving the Criminal and Criminal-Procedural Legislation of the Republic of Uzbekistan, approved by the Resolution of the President of the Republic of Uzbekistan No. 3723 dated May 14, 2018 [1] was accepted. The Concept defines the task of improving certain institutions in criminal and criminal procedure law.

Accordingly, it is important to research the institution of "terminating the criminal case without solving culpability issues" in the criminal procedure and to create new methodological bases for improving the institution, taking into account their specific features.

On the other hand, based on the requirements of modern jurisprudence, we have several tasks in improving the institution of "terminating the criminal case without solving culpability issues". In these tasks we can include the following:

1) re-analysis of "terminating the criminal case without solving culpability issues" by the implementation of advanced foreign experience in criminal procedural legislation and study of problems related to the application of these cases;

2) improvement of certain types of "terminating the criminal case without solving culpability issues" based on the requirements of modern jurisprudence.

### **MATERIALS AND METHODS**

Although the issue of terminating the criminal case is defined in the legislation, due to the concept of this institution and problems arising in practice, this research mainly uses the method of comparative legal analysis. At the same time, observation, generalization, induction, and deduction methods were used.

### **RESEARCH RESULTS**

The cases of terminating the criminal case without solving culpability issues and the procedure for their application are defined both in the criminal procedural legislation of foreign countries and in our national legislation.

In particular, Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan [2] provides grounds for termination of a case without solving culpability issues, and this article specifies 13 circumstances. However, the Criminal Procedure Code does not clearly define the meaning of the concept of termination in criminal cases. Nevertheless, several scientists tried to theoretically explain the essence of this concept.

In particular, O.V. Michurin and S.N. Peretokin noted that the termination of the criminal case is the final stage of the investigation, in which the results of the case are issued, the internal confidence of the investigator is formed, and all cases are expressed in procedural documents, as well as gaps and contradictions, are identified for each collected evidence. [3, p. 26].

According to the opinion of the Russian scientist Filimonov, the termination of criminal cases and criminal



prosecution based on non-rehabilitation is a procedural decision of an investigator or court (judge) on the termination of proceedings on a criminal case or the involvement of a person in the commission of a crime [4, p. 7].

Supporting the opinions of the above authors, we can say that the criminal case regarding this category shall be terminated if the grounds provided for in the above article exist.

According to some authors, the institution of terminating the criminal case without solving culpability issues (termination of the criminal case on grounds of non-rehabilitation) is important both theoretically and practically [5, p. 28] as well as that this institution is contrary to the requirements of the Constitution and some principles and provisions of the Criminal Procedure Code [6, p. 68].

Moreover, in addition to the importance of the institution of terminating the criminal case without solving culpability issues in the criminal process, there are also some problems related to their application in the judicial investigation practice. Below we will analyze the problems associated with this institute.

## **ANALYSIS OF RESEARCH RESULTS**

Today, many problems are encountered in the application of material and procedural law norms in the termination of the criminal case based on non-rehabilitation grounds, in calculating the terms of prosecution, in the termination of the criminal case based on the complaint of the victim, and in the protection of property rights.

**First of all**, if the criminal case was terminated on the grounds provided for in paragraphs 1-3, 8 of the first part of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan, we can see in practice cases of violation of the property rights of the victim or civil plaintiff. We will justify our opinion below.

For example, if the term of prosecution of a person has passed and the accused or defendant (in some cases, their close relatives) does not apply, the investigation or the court will issue a decision or ruling to terminate the criminal case without solving culpability issues.

Special attention should be paid to the norms established by the criminal law, including the terms for prosecution, to terminate the criminal case, if the term of prosecution of a person exceeds. Because in this situation the norms of material law and procedural law require each other [6, p. 96-102].

In this case, the property rights of the civil plaintiff or the victim are violated. However, the decision to terminate the criminal case explains the right of the

victim and the civil plaintiff to apply to the civil court for their property rights.

If the criminal case against a person is terminated by 1-8 of the first part and paragraphs 1, 3 of the fifth part of Article 84 of the Criminal Procedure Code, the civil lawsuit against him will be dismissed and the interested parties will be informed of their right to file a lawsuit in the manner of conducting civil court proceedings. When the criminal case is terminated in the appeal, cassation, or control procedure according to the above-mentioned grounds, such consequences occur concerning the civil claim [8].

In this case, if a civil plaintiff or a victim applies to the civil court for compensation for damages caused by a crime, the court will generally reject the claim based on the presumption of innocence (because the issue of guilt has not been resolved in the decision to close the criminal case or in the court ruling).

A suspect, accused, or defendant is considered innocent until his culpability of committing a crime is proven by the law and determined by a legally binding court verdict. If a civil claimant or a victim files a claim in court in a general procedure, the claim will be rejected due to the expiry of the claim period at the request of the parties during the hearing of the case (if the general claim period has expired).

**For information:** *The statute of limitations is the period that a person can defend his violated right by filing a lawsuit. According to Article 150 of the Civil Code, the general claim period is three years.*

In particular, if the criminal case is terminated due to the expiration of the term of prosecution of a person (according to Article 64 of the Criminal Code, the period of prosecution is at least 2 years), most likely, the general claim period for the civil plaintiff or the victim in the general procedure may expire.

The period of criminal prosecution is the expiration of the periods established by the law from the time of the crime to the time when the sentence is implemented, after which the person who committed the crime should be released from criminal responsibility if there are appropriate conditions [9, p. 162].

In addition, according to the second part of Article 84 of the Criminal Procedure Code, in the cases provided for in paragraphs 1, 2, 3, and 8 of the first part of this article, if the accused, the defendant, or the close relatives of the defunct accused and the defendant request, the proceedings shall be conducted and continued in the general order. In such cases, if there are grounds for conviction, the verdict is issued without the imposition of punishment.

Therefore, it can be considered that the civil plaintiff or the victim also has a property interest in the



conviction of the accused or the defendant by the court, it is appropriate to include the fact that the investigation or judicial investigation is continued and that the accused or the defendant has the right to apply for when considering the culpability issues.

**Secondly**, in paragraph 3 of the first part of Article 84 of the Criminal Procedure Code, it is indicated that the criminal case may be terminated without resolving the culpability issues due to the death of the accused or the defendant.

However, it should not be forgotten that there are also cases of the death of the suspect in the judicial investigation practice today. The current Criminal Procedure Code does not clearly define the procedure for solving a criminal case if the suspect dies during the inquiry, preliminary investigation, or trial stage.

Today, in circumstances where the suspect is dead, the competent authorities initially charge him in absentia, and then, due to the death of the accused, there is a practice of terminating this criminal case without solving the culpability issues.

But if a criminal case has not been filed, a person cannot be accused. This is contrary to the norms specified in Article 84 of the Criminal Procedure Code.

Accordingly, it is proposed to expand the range of persons whose death is the basis for terminating the criminal case without solving culpability issues. Therefore, it would be appropriate to include the death of the suspect in Article 84 of the Criminal Procedure Code as one of the grounds for terminating the criminal case without culpability issues. This, in turn, serves to implement the principle of legality in practice.

**Thirdly**, another problem related to the termination of the criminal case without solving culpability issues – paragraph 6 of the first part of Article 84 of the Criminal Procedure Code (if the case is initiated only by the complaint of the victim and there is no complaint by him, except for the cases provided for in Article 325 of this Code). We will try to justify our opinion below.

Cases of misinterpretation of Article 325 and Article 84 of the Criminal Procedure Code are encountered in the judicial investigation practice. As a result of the misinterpretation of the requirements of Article 325 of the Criminal Procedure Code by most of the inquiry and investigative bodies are making unjustified decisions to refuse to initiate a criminal case under the second paragraph of Article 83 of the Criminal Procedure Code (if the act of the suspect, the accused, the defendant did not contain a crime), citing the absence of a complaint by the victim.

However, according to the requirements of the law, according to the sixth paragraph of Article 84 of the

Criminal Procedure Code, the criminal case must be terminated without solving culpability issues.

Another controversial situation is related to the issue of initiating a criminal case based on the complaint of the victim.

For example, the investigator instituted a criminal case according to Article 325 of the Criminal Procedure Code, that is, according to the complaint of the victim. During the inquiry or preliminary investigation, before the indictment is sent to the prosecutor by the inquirer or investigator, the exact grounds and procedure for terminating the criminal case are not defined in the Criminal Procedure Code.

Currently, in practice, there are many cases of termination of the criminal case based on the second paragraph of Article 83 of the Criminal Procedure Code (if the committed act does not contain a criminal element) after receiving an explanatory letter from the parties stating that there are no complaints from the parties.

Accordingly, it is appropriate to specify the exact procedure and basis for the termination of the criminal case in the Criminal Procedure Code, if the victim withdraws his complaint during the inquiry or preliminary investigation.

Another problematic issue is related to the norm defined in paragraph 6 of the first part of Article 84 of the Criminal Procedure Code. That is, in this paragraph, it is established that the case is initiated only by the complaint of the victim, if he does not have a complaint, the case will be terminated (except for the cases provided for in Article 325 of this Code). Article 325 of the Criminal Procedure Code provides for criminal cases initiated based on the victim's complaint.

Analyzing this norm, cases initiated by the victim's complaint based on Article 84, Part 1, Clause 6 of the Criminal Procedure Code, the criminal case should be terminated if there is no complaint from the victim.

However, in this paragraph itself, the norm is established, except for the cases provided for in Article 325 of the Criminal Procedure Code.

From the content of the article, it can be understood that in general terms, except for the cases provided for in Article 325 of the Criminal Procedure Code (because this norm itself provides situations in which a criminal case is initiated based on the complaint of the victim), circumstances in which the criminal case is initiated by the complaint of the victim, if there is no complaint from him, the criminal case excludes the need for termination.

The main reason for the wording of Article 84, paragraph 6 of the first part of the Criminal Procedure Code is that Article 325 of the Criminal Procedure Code



stipulates that the prosecutor can initiate a criminal case even without a complaint from the victim.

**For information:** according to Article 325 of the Criminal Procedure Code, in special cases in which the victim is unable to protect his rights and legal interests because he is in a helpless state, dependent on the accused, or for other reasons, the prosecutor must initiate a criminal case even without the complaint of the victim.

Accordingly, it is necessary to make the following editorial changes to paragraph 6 of the first part of Article 84 of the Criminal Procedure Code.

"In situations in which the cases are initiated only by the victim's complaint and there is no complaint, the prosecutor initiates the criminal case even without the victim's complaint;"

## CONCLUSION

Based on the results of the analysis, to improve the institution of terminating criminal cases without solving culpability issues, the following is proposed:

**First of all**, if the criminal case is terminated on the grounds provided for in paragraphs 1-3, 8 of the first part of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan, taking into account the cases of violation of property rights of the victim or civil plaintiff, the victim or civil plaintiff (like the accused, the defendant or close relatives of the defunct accused or the defendant) should also be given the right to apply for continuation of the proceedings in the general order.

**Secondly**, we propose to expand the range of people (accused and defendant) circumstances in which death is the basis for terminating the criminal case without solving culpability issues. Therefore, it is appropriate to include the fact that the suspect has died as one of the grounds for terminating the criminal case without solving culpability issues, in paragraph 3 of the first part of Article 84 of the Criminal Procedure Code.

**Thirdly**, it is necessary to make the following editorial changes to paragraph 6 of the first part of Article 84 of the Criminal Procedure Code.

"In circumstances in which the case is initiated only by the victim's complaint and there is no complaint, except for cases where the prosecutor initiates a criminal case even without a victim's complaint;"

**Fourthly**, in the first part of Article 325 of the Criminal Procedure Code, it is appropriate to recognize the matter of "juvenile victim" as a situation that gives the prosecutor the right to initiate a criminal case.

In conclusion, it can be said that, based on the requirements of modern jurisprudence, taking into account the advanced international standards and foreign practice, the improvement of the institution of

terminating the criminal case without solving culpability issues serves to protect the rights and freedom of citizens, as well as to find a solution to the problems arising in practice.

## REFERENCES:

1. Resolution of the President of the Republic of Uzbekistan "On measures to radically improve the system of criminal and criminal procedure legislation" dated May 14, 2018 № 3723. The book of information of Supreme Council of Republic of Uzbekistan. 15.05.2018 y., 07/18/3723/1225.
2. The Criminal Procedure Code of Republic of Uzbekistan. // The book of information of Supreme Council of Republic of Uzbekistan, 1995, № 1.
3. Michurina OV, Peretokin S.N. Ensuring the legality and validity of the termination of the criminal case // Russian investigator. 2016. № 7. P. 26.
4. Filimonov, S.A. Termination of a criminal case and criminal prosecution on non-rehabilitating grounds: Author's abstract. diss... cand. jurid. sciences. Krasnodar, 2009. – P. 28.
5. Musabekov S. Amnesty is an act of humanism of criminal policy in the Republic of Kazakhstan // Femida, 2001, № 6. – P. 21.
6. Makhmudov S. Some issues of dismissal of criminal cases in connection with the expiration of the limitation period for criminal responsibility]. Lawyer Herald. – 2022. – T. 1. – №. 1. – P. 96-102.
7. Sakhaddinov S.M. Mechanisms of repentance and reconciliation: Two faces of the institution of mediation // Huquq-Pravo-Law, 2003. №. 4. – P. 68.
8. Decision Plenum of the Supreme Court of the Republic of Uzbekistan "On Judicial Practice in the Application of the Legislation on Compensation for Property Damage Caused by a Crime" on 27 December, 2016. № 26.
9. Rustambaev M.Kh. The course of criminal law of the Republic of Uzbekistan. A common part. Volume 2. The doctrine of punishment. Textbook for universities. 2nd edition, supplemented and revised – T. : Military-Technical Institute of the National Guard of the Republic of Uzbekistan, 2018. – P. 162.