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Abstract: This article will talk about the right of citizens to appeal to the courts of high instance for criminal cases in order to ensure the independence of the Justice Authority and increase the spirit of trust in the fairness of the court among the people. In addition, the article cited problems with the procedural procedure of appeal by citizens to the courts of high instance, which are found in practice, and suggestions that may be a solution to them.

Keywords: the right to appeal to the courts of high instance by citizens.

Introduction and relevance

Everyone has the right to the effective restoration of these rights by competent national courts in cases where the fundamental rights granted to him by the Constitution or by law have been violated.

Article 8 of the Universal Declaration of Human Rights

"Higher courts consider criminal cases on the basis of complaints and protests and administer justice. The analysis of the practice of law enforcement and the norms of criminal-procedural legal acts regulating the conduct of court cases in courts of appeal and cassation leads to the conclusion that these stages actually serve as a means of quickly correcting mistakes and improving the quality of justice by controlling the judicial activity of lower courts allows" ¹.

The right to appeal against court decisions provided for in the Code of Criminal Procedure of the Republic of Uzbekistan derives from the Constitution of the Republic of Uzbekistan and norms of international law². The norms of international law stipulate the right of every convicted person to file an appeal against court decisions and the fact that this appeal should be considered by the higher court authorities in the prescribed manner, and the decisions of the lower court should be checked.

In accordance with paragraph 5 of Article 14 of the International Covenant on Civil and Political Rights, every person convicted of any crime has the right to have his trial and sentencing reviewed by a higher court on the basis of law³.

The right to appeal court decisions is one of the most important basic rights of citizens involved in criminal proceedings, and it is also a guarantee of the right to judicial protection and fair trial. On the one hand, the right to appeal against court decisions is a guarantee of protecting the rights and interests of a person, on the other hand, it also serves the interests of justice. Protection of the rights and interests of a person involved in criminal proceedings is recognized as a component of conducting criminal proceedings. The interests of justice consist in making a legal, reasonable and fair, that is, a just decision. Any limitation of the opportunity to identify and remedy judicial errors is detrimental to the interests of justice. Deprivation of the right of a person whose rights and legal interests have been violated due to an error in court decisions to apply to a higher court for the

¹ U.A.Tukhtasheva U.A. Criminal procedural ways to eliminate judicial errors: Monograph. – T.: Publishing house TSUL, 2020. – P. 19.

² Constitution of the Republic of Uzbekistan 08.12.1992.

³ International treaties on the Republic of Uzbekistan and human rights.-T.:-Adolat.2007.-B.60

restoration of his rights and interests leads to the limitation of his right to use judicial protection. This, in turn, contradicts the above-mentioned constitutional principles.

The essence of any procedural institution is determined by its structural elements and legal guarantees that ensure its implementation. The fact that the right to appeal against procedural actions and decisions, including court decisions, is defined as one of the main principles of the criminal procedure in Article 27 of the Criminal Procedure Code, giving a special status to the right to appeal, is the basis for the formation of the principle of freedom of appeal. According to the principle of freedom of complaint, persons involved in the process of conducting criminal cases may appeal against any court decision that affects and violates their rights and freedoms.

As N. N. Polyansky wrote, "Freedom to complain is a vivid expression of the guarantees of individual interests and the interests of justice gathered in one institution."⁴

Freedom of appeal in criminal proceedings has not always been fully implemented. Especially during the period of the Red Empire, the freedom to complain was limited in various ways, and the interests of the state prevailed over the interests of the individual in the criminal proceedings. For example, according to the Decree No. 1 "On the Court" adopted in 1917, it is allowed to appeal in the appeal procedure against sentences of deprivation of liberty for a period of no more than 7 days and a fine of no more than 100 rubles. did not By the decision of the Central Executive Committee of the USSR on December 1, 1934, it was forbidden to appeal the verdicts in the cases of terrorist organizations and terrorist acts.

In the Uzbek SSR, the Law "On the Judicial System of the USSR" (1938) is in force, which was considered the main document for the legal regulation of the judicial system and court proceedings for all former republics of the Soviet Union. According to Article 15 of this Law, "Convicts, their defenders, plaintiffs, defendants and their representatives can appeal against the judgments, rulings and decisions of all courts, except the Supreme Court of the USSR and the Supreme Courts of the Union Republics, and the prosecutor can appeal to a higher court can mean.

When considering complaints and protests, the higher court examines the legality and reasonableness of the verdict or decision issued by the lower court, based on the materials available in the case and submitted by the parties"⁵.

In the Criminal Procedure Code of the Republic of Uzbekistan, which was in force until 1994 and adopted in 1959, it was not possible to appeal in the cassation procedure against the judgments issued by the Supreme Court in the first instance cases.

During the formation of our republic as a young independent state, many of the norms of the criminal procedural legislation were similar to the procedures existing in the previous criminal procedural law. In 1994-2000, the review of court decisions in criminal cases was carried out in cassation bodies, and their tasks were sharply different from each other. The basis for hearing a criminal case in the court of cassation is the appeal of the convict, his lawyer, the victim, as well as the prosecutor's protest, filed within 10 days from the date of the court verdict. The judgment of the court of first instance entered into legal force only after the case was considered in the cassation procedure.

The gradual reform of the judicial system in Uzbekistan made it possible to reform and update the criminal justice system, ensuring the rights and freedoms of citizens at the initial stage of the formation of an independent state.

The turning point in the history of review of court decisions began on December 14, 2000, with the introduction of the procedure for review of court decisions made by the court of first instance

⁴ Polyansky. N.N. The purpose of the criminal process Yaroslavl.1919.-P.208.

⁵Law on the judicial system of the USSR. <http://www.consultant.ru/cons/cgi/online>

in the court of appeal, and the reform of cassation and control institutions⁶. An independent Chapter 55¹ - "Proceedings in the Appellate Procedure" was introduced into the Code of Criminal Procedure, which provides for the legal determination of the procedure for reviewing cases at the appellate instance, the examination of the grounds for the review of court decisions at this instance, and the registration of the powers of the appellate instance court.

The introduction of a new appellate instance into the law with the tasks of reviewing court decisions led to a change in the system of checking the legality, reasonableness, and fairness of the court of first instance. Persons who participate in criminal proceedings and have the right to appeal court decisions have the right to appeal against the court verdict within 10 days in the appeal procedure, and after 10 days - the right to appeal in the cassation procedure against the legally binding sentence. Later, the authorized persons could file a protest against the verdict and decision of the court in the appeal or cassation procedure.

If in 2000, almost half of court errors were corrected in the control procedure, according to the results of 2009, more than 85% of such cases were eliminated in the appeal and cassation procedure⁷.

It should be noted that the procedure for reviewing court decisions in the current Criminal Procedure Law is implemented on the basis of the legislation at the time of the introduction of the appellate institution. At the same time, due to the fact that it is important to improve the criminal and criminal-procedural legislation in the course of the reforms carried out in the judicial system in Uzbekistan, appropriate changes are being made to the criminal-procedural legislation step by step.

At the same time, on the basis of the Laws of the Republic of Uzbekistan dated March 29, 2017 and January 29, 2018, to improve the process of reviewing criminal cases in higher courts, to review court decisions in order to protect the rights and interests of participants in criminal proceedings made appropriate changes in the matter.

On July 24, 2020, the President of the Republic of Uzbekistan Sh.M. Mirziyoyev announced important changes to the national criminal procedural legislation to strengthen the legal system, reliable protection of the rights and legal interests of citizens and entrepreneurs, effective justice signed the decision "On additional measures to further improve the activity of courts and increase the efficiency of justice" aimed at ensuring and increasing the role of judicial community bodies.

In addition to the implementation of organizational and structural changes in the judicial system, in the Decree, the Supreme Court of the Republic of Uzbekistan, the Supreme Council of Judges, the General Prosecutor's Office and the Chamber of Advocates are to be terminated by the Supreme Court of the Republic of Uzbekistan. and the proposals of their deputies, which envisage the introduction of the cancellation of the right to lodge a protest in the control procedure over the decisions, sentences, rulings and decisions of the court into the criminal procedural legislation, were approved.

Since 1994, in the Republic of Uzbekistan, the right to appeal against all court judgments in the cassation procedure and in the third stage of the control procedure, regardless of which court was issued, is guaranteed. "on the basis of the law, since 2002, the appellate instance was introduced as a higher instance to review the legality of sentences that have not entered into legal force. Starting from January 12, 2021, the practice of reviewing the legality of non-legal judgments in the appeal procedure and the second stage, i.e. the decision of the appeal instance, in the third stage in the

⁶ Vahabov D.D., Tukhtasheva.U.A. Powers of higher instance courts to identify and eliminate judicial errors. Scientific and practical treatise. -T., 2016.-4b.

⁷ Karimov I.A. The concept of further deepening of democratic reforms and development of civil society in our country: speech at the joint session of the Legislative Chamber and Senate of the Oliy Majlis of the Republic of Uzbekistan, November 12, 2010.-T.: Uzbekistan, 2010.B.18.

cassation procedure, was introduced⁸. It should be said that in some countries the right to appeal is still limited to a certain extent. For example, in the Federal Republic of Germany, it is not allowed to appeal against sentences on the imposition of small fines (Article 313 of the Criminal Code of the Federal Republic of Germany)⁹. According to the sixth part of Article 370 of the Criminal Code of the Republic of Belarus, the rule that it is not possible to appeal against the judgments of the Supreme Court of the Republic of Belarus has been strengthened¹⁰.

One of the important guarantees that ensure the freedom to appeal against court decisions is the procedure for filing an appeal established by law. Review of a judgment or other court decision in the appeal procedure is carried out by complaints of interested parties or protest of an official established by law. Before the introduction of the institution of appellate review of cases into the criminal procedure, there were no strict requirements for appeals against court decisions. Soviet proceduralists believed that the absence of mandatory requirements for the content of complaints and protests was a manifestation of the principle of freedom of complaint¹¹. The fact that there are no requirements for the content of the complaint, the fact that the complaint can be drawn up in any way and the higher court instance cannot refuse to consider it ensures the right of interested parties to appeal against court decisions in any way they want. However, it should be noted that the absence of legal requirements for the content of a complaint or protest makes it difficult for the higher courts to fully investigate the case, identify and eliminate judicial errors. Moreover, this situation, that is, the complainant's failure to fully state his reasons, failure to indicate the errors in the court's decision, destroys the essence of the complaint. Because the circumstances of the court's decision do not agree with them and the reasons justifying this disagreement are not given, it makes it difficult to identify errors in the court's decisions. On top of that, the practice of filing an "initial" complaint and then filing a complaint filled with new reasons and grounds was widespread in those days, even though it was not stipulated by the law. This, in turn, led to the prolongation of the time periods for consideration of the case in the higher instance court, and in most cases, the case was sent to the first instance court for re-registration in the higher instance court. As a result, the entry into legal force of the verdict was delayed for several months, and the person deprived of his freedom was unnecessarily kept in detention centers for months¹².

Appeals and protests can be filed through the court that issued the sentence or directly to the appellate instance. If the complaint or protest is submitted directly to the appellate court, it shall fulfill the requirements stated in the second, third and fourth parts of Article 497⁶ of the Civil Code, inform the interested participants of the process about the submitted complaints, familiarize them with the received complaints, e 'sends the judgment to the court that issued the sentence to provide opportunities for objections, etc.

In accordance with Article 497¹⁰ of the Civil Code, a person who has filed an appeal or protest against a sentence has the right to withdraw his appeal or protest. The senior prosecutor also has the right to withdraw the protest. The prisoner has the right to withdraw the complaint of his defender.

Withdrawal of complaint or protest is tantamount to not giving them. Therefore, the person who withdraws the complaint or protest does not have to prove the reasons for withdrawal.

⁸ Law of the Republic of Uzbekistan "On Courts" dated July 28, 2021 No. 703

⁹ Federal Republic of Germany Law of May 23, 1949 "On the Judicial System". // <https://www.gesetze-im-internet.de/bundesrecht/gvg/gesamt.pdf>.

¹⁰ Criminal Procedure Code of the Republic of Belarus, dated July 16, 1999 No. 295-Z. // <http://online.zakon.kz>.

¹¹ Kalashnikova N.Ya. The main problems of the Soviet cassation in criminal cases Dissertation... candidate of legal sciences.-M., 1944.-P.225-227

¹² Vahabov D.D., Tukhtasheva.U.A. Powers of higher instance courts to identify and eliminate judicial errors. Scientific and practical treatise. - T., 2016.

After the expiration of the time limit for filing an appeal and protest against the verdict, the court that issued the verdict, having fulfilled the requirements stipulated in Article 497⁶ of the Civil Code, shall return the case to the appellate instance within ten days, together with the complaints, protests and objections expressed in connection with them, as well as additional materials submitted. sent to the court. (Article 497⁷ of the Criminal Code).

In order for the persons who have the right to appeal or protest the verdicts in the appeal procedure to exercise their rights fully and without hindrance, higher courts, Plenum of the Supreme Court of the Republic of Uzbekistan No. 13 dated April 20, 2021 "Courts in accordance with the decision of "On the practice of hearing criminal cases in the appellate procedure", the lower courts must check whether the following requirements have been met or not¹³:

- that the contents of the verdict, the term and procedure for filing an appeal or appeal against the verdict at their request have been explained to the parties;
- that those whose interests are affected by the received complaint or protest have been informed about it;
- that copies of court decisions have been handed over to the convicted (convicted), victim, acquitted person;
- that they and other interested parties have familiarized themselves with the complaint or protest, including the additional submitted documents, and have expressed their objections;
- that the appeal, the person who filed the appeal, as well as those whose interests are affected by the complaint or protest, the participants of this process have been duly informed about the time and place of hearing of the case;
- that the requirements of the law on the possibility of the convicted (sentenced), acquitted person, their defenders and legal representatives, the victim, the civil plaintiff, the civil defendant and their representatives to participate in the hearing of the case in the higher instance court have been met, etc.

Subjects of the right to file a complaint and protest in the appeal procedure, as well as submit objections to the received appeal complaints, appeal protest, additional appeal complaint, additional appeal protest before the case is considered by the court of appeal instance, submission of new materials to the appeal instance have the right to ask the appellate court to request such materials.

All the rights listed above, the right to appeal (as well as the right to protest) serve to ensure that the subjects of this right can protect their rights by filing an appeal against the verdict.

References:

1. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated April 20, 2021 No. 13 "On the practice of hearing criminal cases by courts in the appeal procedure"
2. Vahabov D.D., Tukhtasheva.U.A. Powers of higher instance courts to identify and eliminate judicial errors. Scientific and practical treatise. - T., 2016.
3. Law of the Republic of Uzbekistan "On Courts" dated July 28, 2021 No. 703
4. Federal Republic of Germany Law of May 23, 1949 "On the Judicial System". // [https:// www. gesetze-im-internet.de/ bundesrecht / vvg /gesamt.pdf](https://www.gesetze-im-internet.de/bundesrecht/vvg/gesamt.pdf).
5. Criminal Procedure Code of the Republic of Belarus, dated July 16, 1999 295-Z. // <http://online.zakon.kz>.

¹³Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated April 20, 2021 No. 13 "On the practice of hearing criminal cases by courts in the appeal procedure"

6. Kalashnikova N. Ya. Osnovnye problemy sovetskoi cassatsii po ugovolnym delamy Diss... kand.jurid.nauk.-M., 1944.-C.225-227
7. Karimov I.A. The concept of further deepening of democratic reforms and development of civil society in our country: speech at the joint session of the Legislative Chamber and Senate of the Oliy Majlis of the Republic of Uzbekistan, November 12, 2010.-T.: Uzbekistan, 2010.B.18.
8. Law on sudoustroystve USSR. <http://www.consultant.ru/cons/cgi/online>
9. Polyansky. N.N. Tsel ugovolnogo protsesyayu Yaroslavl. 1919.-S.208.
10. U.A. Tukhtasheva U.A. Ugolovno-procesualnye puti ustraneniya sudebnyx oshibok: Monograph. - T.: Izdatelstvo TGYuU, 2020. - S. 19.
11. Constitution of the Republic of Uzbekistan 08.12.1992.
12. Saidov.A. International law on human rights. Textbook.-T.: 2006
13. The Republic of Uzbekistan and international treaties on human rights.-T.: Adolat.2007.-B.60