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**Problems of ensuring of rights of an individual at insight
to materials of criminal case**

Abstract: Provisions of criminal procedural law, which regulate the procedures of insight the materials of criminal case, are incomplete and inconsistency that leads to systematical violations of the right to defence.

It seems possible to amend the situation through issuing of a circular of the Prosecutor of General of the Republic.

Keywords: criminal case; insight; an investigator; rights of an individual; criminal proceedings.

In recent years, it has become more frequent the cases of an ambiguous interpretation by representatives of the parties of criminal process of the provisions of Articles 284-288 of the Code of Criminal Procedure of the Azerbaijan Republic (hereinafter referred to as the CCP), regulating the familiarization with the case materials upon completion of pre-trial proceedings.

We apologize for an involuntary pun, but, unfortunately, in a number of cases, the right is considered to be the point of view of not those who are really right, but who have more rights.

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In our standpoint, a reason for an ambiguous interpretation of Articles 284-288 of the CCP is concluded in their incompleteness and inconsistency, excluding an identity of perception and analysis of the prescriptions of a law.

So, according to Article 284.1 of the CCP, when an investigator deems that there is sufficient evidence to draw up an indictment and transfer the case to a prosecutor in charge of preliminary investigation procedure, he does the next actions:

- inform an accused, his defence counsel, a victim, a civil plaintiff, a civil defendant or their representatives about the end of the investigation;
- specify a place and time for the parties to the criminal proceedings to familiarise with a case file [7, p. 304].

The law says nothing concerning an order of notification about completion of preliminary investigation, therefore in some cases are involved a mail or telephone service, transmitting of notification through an e-mail or sms etc.

However, this is only to define a date and place of the first meeting of an investigator with other participants of process, and not the place and time of insight, since if an accused person is in custody, an issue of his familiarization with case file together counsel defender or separately, might be only solved after their meeting.

Know-how in part of notification of process' participants about completion of pre-trial production belongs to acting investigator for particularly important cases of the Department on fight to corruption of the Prosecutor's office of Azerbaijan Republic, who having met the authors of the present lines in court room, informed them in verbal on completion of investigation and necessity to be appeared in an investigatory isolation ward, wherein having made a video recording of this action on his mobile telephone.

Here, we would like to note that for unknown reasons, the Main Investigatory Department and the Department on fight to corruption of the Prosecutor's Office of



Azerbaijan do not accept the letters, petitions and complaints of lawyers, ordering to send them to the Prosecutor General's Office, which negatively affects the timing of their consideration.

According to Article 285.3 of the CCP, an accused and his defence counsel shall familiarise to the case file before the other participants of the process in this connection the notification of other participants of the process (a victim, civil plaintiff and civil defendant and their representatives) about completion of preliminary investigation (Article 284.1.1 of the CCP) is objectless, since it will be impossible to define the place and time of their familiarization with a case file (Article 284.1.2 of the CCP) in as much as one needs to wait for completion of insight the case by an accused and his defence counsel and an investigator cannot guess or order when it happens [7, p. 305].

Here we should note that according to Article 51 of the CCP, the course and the outcome of procedural acts in criminal prosecution shall be set down in a record, in this connection it seems necessary to indicate in Article 284 or Article 285 of the CCP the duty to draw up a record of announcing about completion of preliminary investigation with decision in it the issues coming from the requirements of Articles 284.1.2, 284.2, 284.3, 285.1, 285.2, 285.3 and others of the CCP [7, p. 72-73].

So, in this case it will be possible to determine a specific date, from which will be flown the five days term of possible postponement of a defence counsel (representative) with familiarization, and the main – a term of familiarization.

As for a notification (Article 284.1.1 of the CCP), then one should foresee such its order, when the participants of a process will have an opportunity timely but not hasty appearance.

So, in our standpoint, a notified person should be provided the time (minimum 2-3 days) to arrange his work concerning other cases, if necessary to



postpone planned measures etc., and not to appoint the meeting the next day, which might be scheduled by a defence counsel or representative a week ago.

Here it seems necessary to dwell on an issue of the time (date) of announcement of the end of pre-trial proceedings, since the most conflict situations originate from it.

So, according to Article 287 of the CCP, for submission a petition after familiarization with a case file a participant of process is provided 48 hours, after that an investigator wait 48 hours for possible complaint to his decision on refusal of petition [7, p. 306].

However, Article 287 of the CCP says nothing how much time an investigator should wait for consideration of a complaint by a prosecutor on his decision.

According to Article 122.5 of the CCP, a complaint of the participant of process should be considered in time up to 3 days [3, p. 166].

After fulfillment of the procedures stipulated in Articles 284-288 of the CCP, an investigator draws up an indictment (the law does not limited the time for that), and then he send the case file to a prosecutor.

According to Article 290.1 of the CCP, if an accused person arrested or as restraint measure in respect of him is chosen home arrest, the both the criminal case and an indictment should be sent to prosecutor minimum 20 days before expiry of the term of indicated restraint measures.

According to 290.3 of the CCP, a prosecutor shall consider the case with the indictment within 5 days [7, p. 310].

According to Article 292.1-1 of the CCP, if an accused person arrested or as restraint measure in respect of him is chosen home arrest, the both the criminal case and the confirmed indictment should be sent to a court from prosecutor's office minimum for 15 days before expiry of the term of indicated restraint measures [7, p. 311].



Thus, on the modest estimates, familiarization with case file should be completed minimum 20-25 days before an expiry of the term of an arrest or home arrest.

Having added to these 20-25 days the time that need to familiarize with the case file, with retrospective way one may define quite exact date of announcement on completion of preliminary investigation.

If proceed from scientific data that normal familiarization (perception and analysis) with one printed sheet is possible for 5 minute then with standard 250-300 sheets criminal case in a one volume might be familiarized for 1250-1500 minute, i.e. for 20-25 hours, i.e. for 2.5-3 eight-hours working days that provided by the rules of the investigatory isolation wards [1; 2; 3; 4; 6]. In addition, it is necessary to take into account the time for familiarization with material evidence, attachments (discs etc.) to the records etc.

Therefore, in our standpoint, as a product of six-month investigation, criminal case, for example, consisting of 3 volumes without material evidence and attachments, has to be announced by an investigator on completion of investigation for 27.5-34 days before an expiry of the term of an arrest or home arrest.

If criminal case consists of 10 volumes then the beginning of familiarization to the case file has to be announced for 45-55 days before an expiry of the term of restraint measure (an arrest or home arrest) etc. without considering of the material evidence, to which some wisecracks relate accounting documentation and multi-hour discs with hundreds of pages of printed information.

It seems that if similar method of counting time that need to familiarize with file case will be approved by a circular of the General Prosecutor's Office then this will exclude numerous pettifoggers of investigators and their leaders to the Bar Association, camouflaging the professional and procedural incompetence of their authors.



Fortunately, a new leadership of the Bar Association is based in its activities only on the norms of law and morality, and does not accept opportunistic considerations.

According to Article 285.1 of the CCP, an investigator provides for familiarization of a case file in one of few intertwined volumes with numbered sheets, each volume containing a list of the documents therein. Material evidence kept with the case file and attachments to the records of investigative procedures shall also be presented. Where the case file consists of several volumes, all the volumes shall be presented at the same time [7, p. 305].

However, it is impossible to provide simultaneously all criminal case if few accused persons is registered in one case; especially if some of them are in custody, some ones are free.

The way out of this situation is seen in the practice applied in a number of the states, when at announcing of the completion of pre-trial proceedings, the defense party is presented with copies of all the case materials without exception. It is a little unprofitable, but it seems that law enforcement bodies with their unlimited possibilities will withstand this burden, but human rights in this part and conditions of fair trial will be observed.

Speaking on the list, the investigators and their procedural and non-procedural leaderships should keep in mind that this document, where in the sequence corresponding to the filed in a volume numbered documents, their names with a date of compilation are listed and the pages-sheets of a case are indicated. Each document must have an entry in the list. One cannot draw up the list with one-two generalizing entries like ‘warehouse report for January 2018 with applications’, or ‘materials received from the police department’ etc., no matter how laborious it was. The list must be signed by a person who compiled it, but not by a public assistant of an investigator.



According to Article 285.3 of the CCP, an accused and his defence counsel familiarize with the case file before the other participants to the criminal process and have the right to do so together or separately. A victim, civil plaintiff and civil defendant have the right to familiarize with the case file together with their representatives [7, p. 305].

However, this does not mean that in a certain stage of familiarization a defence counsel and an accused will not be able to change their initial decision and to continue familiarization either jointly or separately.

According to Article 285.4 of the CCP, an investigator may not impose a time limit for familiarization with the case file. However, if participants to the criminal process prolong this process unnecessarily the investigator may lay down a schedule for familiarization with the case file, bearing in mind the volume of the file and the time required to familiarize of it [7, p. 305].

As noted above, the timing of familiarization with the case file is the most frequently encountered ‘stumbling blocks’ in multifaceted palette of relationships between the parties to the criminal process.

At this stage of the proceedings, the prosecution party, in a sequence established by its rich practice, forgetting about other people’s grievances, starts with requests and beliefs, and then proceeds to coercion, using for this purpose ‘heavy artillery’ in the person of high-ranking leaders.

Indeed, the terms are ‘burning’, legal and illegal arrests are under threat, and there are other, negative and undesirable consequences for every official, and here is some stubborn defence counsel or accused, who does not want to sign a record on the familiarization with the case materials.

As mentioned above, a legitimate solution to such a problem is seen only in the development of arithmetical abilities and memory at prosecution party.

Anyone who is familiar with the basics of arithmetic must be able in advance to calculate an amount of the case and the time necessary to familiarize it



according to scientific data. And the memory here is that one cannot forget similar situations, as a rule, wander from one familiarization to another one.

As for the 'artillerymen' involved, they should know and not forget that forcing a defense party to sign a knowingly unreliable record of familiarization, they violate a dozen of the prescriptions of criminal and criminal procedural laws.

The law stipulates an inadmissibility of artificially delaying familiarization with the case files, but does not reveal its essence.

We agree that if a defence counsel does not come few days in row to familiarize with materials of a case (though it may be objective reasons to this) or to familiarize with printed sheet not 5 and 6 or 7 minute (though it may be objective reasons to this) then a prosecution party may formally assert about artificial delaying of the familiarization process.

However, if familiarization occurs within the timeframe defined by science, then there is no basis for assertions on artificial delay and drawing up schedule.

As for the schedule, then the law does not contain clear scientifically based order that creates often paradoxical situations.

The schedule is a plan of works with exact indicators of the norms and time of fulfillment [5, p. 144].

Suppose that for 3 days a defence counsel has only familiarized with two three-hundred pages volumes of the criminal case, which consist of 12 volumes, and an investigator has considered this as an artificial delay of the process and decided to draw up a schedule.

However, the schedule although is an abstraction, however, it must be based on the laws of being.

This means that an investigator is obliged to indicate in it the indicators of the norms and time of their fulfillment with considering physiological and psychological particularities of an individual, i.e. with considering of the norms of familiarization that developed by science, and not by his desire.



Consequently, if as it above noted, a defence counsel or accused person remained to familiarize with ninth three-hundred pages volumes then an investigator is obliged to provide for the schedule 27 eight-hours working days, and other will be illegal violence.

It seems that there cannot be principled objections against similar schedule, if only an investigator will not order mandatory sequence of familiarization with the volumes of a case and present entire case files in full together the three first volumes. In our standpoint, the schedule must only contain data on time of familiarization and quantity (volumes or sheets) of the materials, to which need to be familiarize, and it will be occurred from volume no. 4 or volume no. 12, this is not included in competence of an investigator; only would not forget to present entire case files with material evidence and attachments.

Acting investigator on especially particular cases of the Department on fight to corruption of the Prosecutor's Office of the Republic drawing up the schedule has ordered to the authors of the present lines to re-familiarize with the volumes of case files, with which they have previously familiarized, that was reflected in appropriate records.

When the investigator was told about that, he has said that according to his observations the defence counsels have familiarized with indicated volumes superficially, and therefore they need an additional familiarization.

When the investigator was asked, whether he has joked, acting investigator replied that they do not joke to the process.

From one of his known reasons, the same investigator in the schedule for the familiarization allocated one of the defence counsels 5 days, and the other only two. When he was asked about the reasons for such a decision, having thought, he replied that in this way he took into account an experience and qualifications of lawyers. That is a psychologist!



According to Article 285.5 of the CCP, the persons familiarizing with the case file shall have the right to transcribe extracts from the requisite documents in the file, to make copies and to take photos of the material evidence [7, p. 305].

According to Article 285.6 of the CCP, an investigator shall not allow to the persons who familiarize with the case file to transcribe extracts, make copies or take photos of documents concerning private, family, state, professional or commercial secrets [7, p 305].

The foregoing provisions of the law require detailed consideration, because, in our view, are incomplete, which is fraught with violations of the right to defense.

So, at familiarization with materials of criminal case on accusation of A the same acting investigator of the Department on fight to corruption referring to ephemeral family secret, has prohibited to the defence counsels to make notes from digital data of an operator of mobile communication concerning the numbers of telephones and the time of made talking on them.

Despite that the investigator was clarified about absence of any family secret in the digital data he has made a decision to ban a copying, having ordered to the defence counsels to remember information on a few hundred sheets of the typescript.

Complaint on similar actions and decisions are considered by the leadership of prosecutor's office until now.

Here we should note that acting investigator did not allow also to the defence counsels to familiarize with a few hundred sheets of criminal case, having stated that they do not concern our client and made a decision about that. And this is despite the fact that our client has registered in the case as an organizer and leader of the criminal group.

It seems that an issue about attitude to an accused person those or other materials of a case should be resolved by representatives of defence party, and not



by an investigator since according to Article 7.0.6 of the CCP, criminal case means a body (combination - indivisible compound, presenting a sum, result) of all material collected in connection with the offence committed or supposed offence during the prosecution period [7, p. 40].

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