

Examining the authority and duties of the investigator in the criminal justice system of Iran

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Abstract

An investigator is one of the holders of judicial positions, who performs measures to detect crimes, pursue criminals, search houses, examine the place, acquire tools and instruments of crime, summon the accused and interrogate him, summon people who know about the crime, as well as witnesses and question them. And by this means, it helps the judge in discovering the truth, which is the basis of the verdict. In Iranian law, the investigator, who is also called "investigating judge", is one of the most key people in discovering crimes and realizing judicial justice and fair proceedings; Therefore, research in this field is of special importance. The present article has also researched the duties and powers of the investigator in Iran's criminal law through a descriptive-analytical method. First, the role, function and duties of the investigator were stated, and then the separation of the prosecutor from the investigator was discussed and the appropriate conclusion was obtained, i.e., the description of the duties of the investigator.

Keywords: Investigator, Investigator's duties, Iranian criminal law.

1- Introduction

In Iran's legal system, a person called "investigator" is responsible for investigating and dealing with criminal cases. The investigator is a judicial official who performs his duty within the framework of criminal procedure laws. The limits of the investigator's responsibilities include conducting preliminary investigations, how the crime occurred, identifying the accused and interrogation. In order to conduct preliminary investigations and deal with criminal cases, the investigator first obtains permission from the prosecutor and then starts conducting investigations and sends the results of the investigation to the prosecutor's office. Avoid revealing the name and details of the accused (Ghafouri, 2021).

Before sending the case to the court and hearing it by the judge, the investigator must first conduct the preliminary investigation of the crime in question and then send the case to the court. Therefore, the activity of the investigator in the prosecutor's office is the stage before the court, and the proceedings must be carried out according to the law of criminal procedure. Although it is specified in the law that the preliminary investigation of all crimes is the responsibility of the investigator, but this has exceptions. Crimes including violation of chastity, both "Had" and "Taziri", 7th and 8th degree tazir crimes, all crimes committed by persons under 15 years of age and crimes committed in the jurisdiction of the department, which are crimes of Article 302 of the Criminal Procedure Law, are basically not raised in the prosecutor's office and directly in It is the jurisdiction of the court.

2- Research method

This article is qualitative in nature and has used the descriptive-analytical method. In the current research, the background research method (research synthesis) has been used. Hypotheses have been proposed and analyzed. Collecting data from books and articles related to the subject was explored by searching terms such as investigator, investigator duties, and investigation goals. Articles related to the topic were selected and downloaded through systems such as Civilica, Normex, Google Scholar and comprehensive humanities portal. Then, from the combination of the selected findings and their original analysis and investigation, taking into account the purpose of the article, that is, the description of the duties and objectives of the investigation, appropriate conclusions were made. In this article, it was tried to present the research method according to the goals and research questions, the sources used, the method of collecting and analyzing the findings accurately and comprehensively, so that the readers can be sure of the accuracy and certainty of the results and conclusions.

3- Objectives of the investigation

The set of questions asked by the investigator and the collection of correct information from the accused are at the top of the objectives of the investigation (Karami and Dehghan, 2019). Therefore, the investigator must accurately and meticulously conduct the desired investigation, how the crime occurred, gather evidence, etc. One of the most important things in conducting research to complete the case is interrogation. The interrogation must be done in writing and oral statements have no place in conducting the investigation. The questions raised must be related to the crime and irrelevant questions must be avoided. It is forbidden to use insulting words for the accused during the interrogation, and also Statements with reluctance and omissions are not valid. In this way, the investigator can obtain accurate and correct information by observing the above.

4- Jurisdiction of the investigator

Jurisdiction means that the prosecutor's office has the authority to conduct preliminary investigations by the investigator according to the law. Article 116 of the Criminal Procedure Law stipulates; The investigator performs his duty in the jurisdiction of his mission by complying with the provisions of this law. Therefore, the investigator has jurisdiction in his jurisdiction, if a crime

occurs and is discovered, or if the accused is arrested in the jurisdiction, or the accused resides in the place of his mission, even if the crime is committed in another area. The investigation must be conducted in a fair manner, respecting the principle of impartiality, preserving information and not disclosing it, as well as respecting human rights, explaining the matter to the accused and the right to access to a lawyer (Yousefi, 2019).

In the criminal procedure law, the prosecution and investigation authorities are separated from each other and each has its own duties, which indicates the independence of the role of the investigator from the prosecutor (Shakeri and Hadizadeh, 2015).

Considering the role of the investigator in the prosecutor's office, the following questions come to mind:

- 1- Will the proceedings be delayed at the court stage?
- 2- Does the supervision of the prosecutor in carrying out the tasks assigned by the investigator impair the independence of the investigator?

5- Duties of the investigator

The duties of the investigator include conducting preliminary investigations, collecting the evidence necessary to detect the crime, observing the principle of impartiality, preserving the reasons for the crime and protecting information, preventing the seizure of investigations and issuing orders, which we will briefly explain each of them.

- a) Conducting preliminary investigations: according to Article 92 of the Code of Criminal Procedure, conducting preliminary investigations of all crimes is the responsibility of the investigator, and the investigator has the duty to initiate preliminary investigations in order to obtain information.
- b) Gathering the necessary evidence to discover the crime: The investigator must collect all the reasons and traces of the crime in order to facilitate the identification of the accused. Collecting the reasons for the occurrence of the crime will allow the accused to be easily identified and not be able to make preparations for his escape and hiding.
- c) The principle of impartiality of the investigator: The investigator must conduct the preliminary investigation with complete impartiality and independence and without intention. Also, the investigator is obliged to ignore friendly and familiar aspects in the investigation in order to maintain the independence of the investigation.
- d) Maintaining the causes of the crime and protecting information: The investigator must preserve the evidence obtained in the investigation and prevent their publication. The preliminary investigation must be confidential, written, secret and non-public. Article 91 of the Criminal Procedure Code refers to the support for the publication of information related to the victim. .
- e) Avoid stopping the investigation: After the accused is prosecuted, the initial investigation is done immediately and even holidays cannot prevent the investigation. Therefore, the investigator must conduct the investigation quickly and without hindrance.
- f) Issuing order: Another task of the investigation is to issue an order. Issuing orders, including arrest order, prohibition order, criminal order and other orders mentioned in the law can be considered as one of the duties of the investigator. Issuing an order means the completion of the preliminary investigation and the case is ready to issue an order. With the formation of courts, the investigation found a place in Iran's judicial system, and the law assigned duties to the investigator (Mansouri Dehbid et al., 1400). In Iran's criminal system, the prosecutor's office is the authority for prosecution and investigation, and necessarily all cases, except those that are brought directly to the court, must be investigated and investigated at the prosecutor's office stage. or the absence of reasons to assign a crime to the accused, and in case of assigning a crime, he makes a decision.

6- Obedience of the investigator to the prosecutor

It was stated that the investigator has sufficient independence, so the principle is on the independence of the investigator. The independence of the investigator is one of the principles of impartiality and the most important components of the investigation in the criminal procedure. In general, the independence of the investigator is one of the accepted rules in criminal proceedings (Fathi and Dehghani, 2008).

Among the few exceptions to the independence of the investigator from the prosecutor are cases where the investigation is not complete in the opinion of the prosecutor, the investigator is obliged to complete the investigation and cannot disagree with the opinion of the investigator. Another case is related to the non-certification of the guarantor. If the investigator does not confirm the guarantor's sufficiency, he must bring the matter to the prosecutor's opinion. Delay is one of the important problems of the judicial system. Various factors play a role in the delay of proceedings, including judicial actions, lack of speeding up the proceedings, the complexities and extents of the judicial system, and the high volume of cases are effective factors in the delay of proceedings. In the proceedings, it is sometimes seen that the process of dealing with a case is unusually long to the point where a person objects to this long process. Procrastination of the proceedings causes a delay in the issuance of the verdict and the failure of the correct execution of justice.

7- Separation of the prosecutor from the investigator

The separation of the prosecutor from the investigator means the independence of the investigating judge, but this does not include the absolute separation of the prosecutor from the investigator (Joibari and Jamnani, 2014). Therefore, the provision of necessary training by the prosecutor and the supervision of the investigator to conduct the investigation does not violate the independence of the investigator. The prosecutor should not intervene in the preliminary investigation phase, but this does not mean that the prosecutor is passive in the preliminary investigation phase. By presenting his legal opinions to protect the rights of the society, the prosecutor should be aware of the activities of the investigating authority.

In the criminal procedure law, articles 89 to 216 are dedicated to the duties and authority of the investigator. The first and most important task of the investigator is to conduct preliminary investigations. If the investigator himself oversees the occurrence of the crime, he can conduct the preliminary investigation, otherwise, he conducts the preliminary investigation if referred by the prosecutor. In the initial investigation, the investigator must carry out all the traces of the crime, the evidence of the crime, identifying and finding the accused, preventing the escape and hiding of the accused. The investigation must be conducted confidentially and non-commercially, and the investigator is obliged to maintain professional secrets. Because the principle is to prohibit the publication of images and details related to the identity of the accused.

Another task of the investigator is to collect the necessary reasons to discover the crime. In the event of a crime, the investigator examines and collects all the reasons and effects that are effective in the process of discovering the crime. The investigator should not delegate his duties to someone else. The investigator should take immediate measures in conducting the investigation and should not delay in studying and collecting the reasons for the crime. Another duty of the investigator is to prevent the destruction of the reasons for proving the crime. If a crime occurs and the investigator is informed, the necessary and necessary measures must be taken to preserve the evidence effective in the investigation of the crime by the investigator, and the documents and documents of the crime must be protected. The investigator of the case is responsible for keeping information and preventing their disclosure. Therefore, one of the important duties of the investigator is to preserve the confidential information of the accused. The investigator must take the necessary measures to prevent access to the information of the case and use the solutions that prevent the disclosure of confidential information in the investigation process (Maboudi Nishabouri and Rezaei, 2022).

One of the duties of the investigator is the principle of impartiality. One of the principles of public proceedings is the principle of impartiality of the investigator, and since it has a commanding aspect, it must be respected and not violated. And in conducting investigations, he should ignore relative and causal relationships and base the principle of impartiality and refrain from actions that strengthen or weaken the accused (Haji Mohammadi et al., 2017). The principle of impartiality is of great importance, so that the hadiths and the religion of Islam have paid attention to the principle of impartiality. Preliminary research should be done quickly and continuously, and no issue should prevent the research. If the accused is not discovered and identified during the investigation, the investigator must stop the investigation on the pretext of not having access to the accused, but must continue the investigation. In Article 104 of the Criminal Procedure Code, the legislator specifies the conditions for issuing an order to stop the investigation; 8. If the perpetrator of the crime is not discovered by conducting the necessary investigation and two years have passed since the crime occurred, with the consent of the prosecutor, an order to stop the investigation will be issued and the case will be filed temporarily. Issuing an order is one of the final duties of the investigator. The legislator has included the issuing of some orders among the duties of the investigator. Issuing an order in the courthouse means that the investigation has been concluded and the investigator issues a final order regarding whether the accused is guilty or not. When the case is ready to issue an order when it has gone through the preliminary investigation and the investigator is obliged to issue one of the orders to bring to trial, order of guilt, order of prohibition and suspension of prosecution.

8- public prosecutor's office

A prosecutor's office is a judicial institution that is headed by a prosecutor and has the necessary number of deputy prosecutors, assistant prosecutors, investigators, and administrative employees. The prosecutor's office is the first judicial institution to detect crimes, investigate and prosecute the accused, and is the most important institution to protect public rights and establish order and security in society.

Criminal procedure is a set of regulations and rules that include crime detection, prosecution of the accused, preliminary investigations, proceedings, issuing of judgments and implementation of judgments. It also includes determining the duties and powers of judicial authorities and bailiffs. Carrying out some of the aforementioned actions, including crime detection, prosecution of the accused and preliminary investigations, is the responsibility of the investigative judge, and matters such as issuing the indictment, defending the indictment, and executing the verdict are not within the authority of the investigative authority. In the judicial system of Iran, the preliminary investigation stage follows the investigation system and the trial stage follows the accusation system. This means that the preliminary investigation is done in a non-public, non-commercial and independent of the court, in an institution called the prosecutor's office, by the investigator. During the investigation, if the investigator discovers a crime that cannot be forgiven and the discovered crime is related to the first crime, the investigator will deal with this crime and there is no need to inform and refer the prosecutor. But if the second crime is not related to the first crime, the investigator informs the prosecutor and continues the investigation if the prosecutor refers him. In the investigation process, first of all, necessary measures are taken to obtain important evidence and prevent the accused from escaping and hiding. But in obvious crimes, the order of the above-mentioned steps is not necessary. In obvious crimes, the legislator has given permission to the judicial officers to perform certain actions without the order of the judicial authority, which of course, this permission is until the presence of the judicial authority, and the judicial officers have the right to intervene after the presence of the judicial authority without the order issued by the judicial authority. They do not have obvious crimes.

9- Conclusion

By looking at the contents of the document, the resulting conclusion is as follows; The occurrence of crime harms the security of the society, therefore, in order to maintain the security in the society, strategies should be made to make people aware of the laws and regulations in order to reduce the occurrence of crime. If a crime is committed, it is expected that the perpetrators of the crime will be identified and arrested soon, and they will be dealt with according to the law. One of the important and basic institutions of the judicial system, which is responsible for identifying and arresting the accused, is the prosecutor's office. In the aforementioned institution, the investigating authority is responsible for the necessary measures to discover the crime and identify the accused. Therefore, after identifying and finding the accused, the investigator, maintaining the principle of impartiality and continuous investigations, proceeds to issue an order, which is an important sign of the independence of the investigator in the prosecutor's office. is. Therefore, in order to guarantee the rights of the accused and observe the principle of impartiality, the investigative authority was formed in the criminal procedure. What is expected from the investigation authority is to make a decision regarding the fate of the case with a clear conscience and in accordance with the law, so that the rights of the accused are not lost.

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