



# **RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION**

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## **On Court Consideration of Motions for Investigative Actions Limiting the Constitutional Rights of Citizens**

Investigative and other procedural actions, which may only be performed by virtue of a court decision or, in exceptional circumstances, with a following verification of their lawfulness by the court, limit the constitutional rights of citizens to private property, inviolability of home, inviolability of private life, to personal and family privacy, to the privacy of correspondence, telephone communications, mail, cables and of other communications (Articles 23, 25, 35, 36 of the Constitution of the Russian Federation). This obliges the courts, when acting in the manner stipulated in Article 165 of the Criminal Procedure Code of the Russian Federation (hereinafter – CrPC RF), to unflinchingly observe the guarantees stipulated in regard of the aforementioned rights in the Constitution of the Russian Federation and the law of criminal procedure.

With regard to the questions raised by the courts in consideration of motions of preliminary investigation bodies, related to limitation of constitutional rights of citizens, as well as in order to ensure uniform court application of criminal procedure legislation, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

1. The attention of the courts is directed to the fact that in regard of every motion for the performance of an investigative or another procedural action (hereinafter – investigative action), received by the court, the judge needs to ascertain whether the motion meets the requirements of Parts 1 and 2 of Article 165 of the CrPC RF: whether the court has jurisdiction to consider the motion, whether the criminal case is processed by the same investigator or inquiry officer that filed the motion, whether the head of the investigative body or a prosecutor consented to the performance of the investigative action, whether the motion contains the necessary information (name of the exact investigative action; the address at which an inspection or search of a dwelling is to be performed, etc.), and also whether the motion is accompanied by materials necessary for its consideration (copies of decrees to initiate the criminal case and accept the criminal case for proceedings, to prolong the term of preliminary investigation, to renew proceedings in the criminal case, materials confirming that there are grounds for performance of the investigative action, etc.). In particular, a motion for realization, utilization or destruction of a piece of material evidence (Part 3<sup>1</sup> of Article 165 of the CrPC RF) must contain information about the owners or other lawful possessors of the item recognized as a piece of material evidence, necessary for notification of the aforementioned persons about the place, date and time of the court session (residential address, phone number, etc.).

2. The courts should take into account that if a preliminary investigation or inquiry in a criminal case is conducted by a group of investigators or inquiry officers, only the head of that group may initiate a motion for the performance of an investigative action (Item 7 of Part 4 of Article 163, Item 8 of Part 4 of Article 223<sup>2</sup> of the CrPC RF).

Where a motion for the performance of an investigative action is initiated before the court directly by the head of the investigative body that accepted the criminal case for proceedings, the consent of a higher head of an investigative body is not necessary for forwarding the motion to the court.

A special manner of proceedings in criminal cases (Chapter 52 of the CrPC RF) is applied to persons referred to in Part 1 of Article 447 of the CrPC RF, and the consent to investigative actions performed only by virtue of a court decision may be given with due regard to the provisions of Part 5 of Article 450, Article 450<sup>1</sup> of the CrPC RF.

3. If a motion received by the court does not meet the requirements of the law of criminal procedure, which precludes its consideration, the judge returns the motion to the person that forwarded it, indicating the reasons for such a decision. In such situations, the term stipulated in Parts 2 or 3<sup>1</sup> of Article 165 of the CrPC RF is calculated from the moment of repeated receipt of the motion by the court.

4. In accordance with Part 2 of Article 165 of the CrPC RF, a motion may be submitted either at the place where the preliminary investigation is conducted, determined in accordance with Article 152 of the CrPC RF, or at the place of performance of the investigative action. If the motion is submitted by the investigator or inquiry officer in violation of the rules of court jurisdiction, the judge issues a ruling to refuse to accept such a motion, with reference to these grounds.

5. Proceeding from Part 3 of Article 165 of the CrPC RF, a judge takes the necessary measures in regard of a motion for performance of an investigative action, received by the court, aimed at timely notification of the investigator or the inquiry officer and of the prosecutor about the forthcoming court session, and, where Part 3<sup>1</sup> of the aforementioned Article applies, – of other persons as well.

Taking into account the limited time, within which the motion is subject to consideration, courts should use telephoned messages, SMS messages, fax messages and other means of communication that ensure the timely nature of such notification.

If a motion for performance of an investigative action pertaining to realization, utilization or destruction of material evidence is subject to consideration, the notification about the place, date and time of the court session must be forwarded not only to the investigator or inquiry officer that filed the motion and to the prosecutor, but also to the suspect, accused, their defence lawyers and (or) statutory representatives, the owner or another lawful possessor of the item recognized as a piece of material evidence in the criminal case, who have the right to participate in the court session.

6. The courts should take into account that by general rule motions for the performance of investigative actions are considered in open court sessions. Where Part 2 of Article 241 of the CrPC RF applies, the court session may be held *in camera*, in which regard the judge issues a reasoned decree.

7. By implication of provisions of Article 165 of the CrPC RF, in the beginning of the court session the judge announces, what motion is subject to consideration, clarifies to the persons present in the court session their rights and obligations, including the rights to file recusals and motions, to present materials pertaining to the issue under consideration, to participate in their inspection. Then the person that initiated the motion (if it is participating in the court session) states the reasons for the motion, and the court inspects the presented materials and hears the persons present, the opinion of the prosecutor participating in the court session. After this the court retires into the deliberations room to adopt a ruling.

Non-appearance of persons duly notified of the place, date and time of the court session does not preclude its conduction.

8. When considering motions for an inspection of a dwelling without consent of persons living in it, for a search and (or) seizure in a dwelling (Items 4 and 5 of Part 2 of Article 29 of the CrPC RF), courts should proceed from the notion of a dwelling stipulated in Item 10 of Article 5 of the CrPC RF.

Taking into account the provisions of Part 5 of Article 177 of the CrPC RF, court permission is required to conduct an inspection of a dwelling, if at least one of the persons living in it objects against the inspection.

9. In accordance with Item 7 of Part 2 of Article 29 of the CrPC RF, Part 3 of Article 183 of the CrPC RF, Article 13 of Federal Law No. 323 of 21 November 2011 “On Basic Norms of Health Protection of Citizens in the Russian Federation” (hereinafter – Federal Law No. 323) and Article 9 of the Law of the Russian Federation No. 3185-I of 2 July 1992 “On Psychiatric Assistance and Citizens’ Guarantees in its Rendering”, a court decision is required for seizure of medical documents containing information that falls under medical confidentiality protected by law.

Herewith, the courts should note that in accordance with Item 3 of Part 4 of Article 13 of Federal Law No. 323, where there is no consent of a citizen or its statutory representative, certain information falling under medical confidentiality (e.g. about the fact that a citizen applied for medical assistance, including psychiatric assistance; that a citizen is under medical surveillance), may be provided by a medical organization without a court decision upon the request of an investigator or inquiry officer due to verification of a notification about a crime in

the manner stipulated in Article 144 of the CrPC RF, or due to the investigation of a criminal case.

10. The attention of the courts is directed to the fact that seizure of items and documents containing information about the deposits and accounts in banks and other credit organizations is only performed by virtue of a court decision. In accordance with Part 4 of Article 26 of Federal Law No. 395-I of 2 December 1990 “On Banks and Banking Activities”, a reference note regarding the accounts and deposits of a natural person may be issued by a credit organization without a court decision upon request of an investigator and in regard of a criminal case that this investigator is processing, if such a request is approved by the head of the investigative body.

11. Based on provisions of Item 24<sup>1</sup> of Article 5 of the CrPC RF, if a motion is filed for receipt of information about connections between the subscribers of services and (or) between subscriber devices in accordance with Article 186<sup>1</sup> of the CrPC RF, a judge may give permission to acquire information about the date, time, duration of connections between the subscribers and (or) subscriber devices (user equipment), about the subscribers’ numbers, other data that allow to identify the subscribers, as well as information about the numbers and location of base transceiver stations.

Other data that allow to identify the subscribers include, in particular, information about the IMEI-code of a subscriber device or information about the location of the cell phone relative to the base station.

12. When considering a motion for the performance of an investigative action, in every situation the judge must verify not only whether the requirements of the law of criminal procedure to the manner of initiation of a motion were met, but also where the actual facts exist, which serve as grounds for the performance of the investigative action indicated in the motion (for example, when considering a motion for search of a dwelling, the judge must ascertain that the materials of the criminal case contain information that is sufficient to suppose that the aforementioned dwelling may house instruments, equipment and other means of committing the crime, items, documents and valuables that may have significance for the criminal case).

13. If a motion is filed for arrest of property in order to ensure the enforcement of the sentence in part of execution of punishment in the form of a fine or in order to

secure the civil claim, the courts should note that the price of arrested property must not exceed the maximum volume of the fine stipulated by the sanction of the corresponding article of the Special Part of the Criminal Code of the Russian Federation (hereinafter – CrC RF), or must be proportionate to the damages caused by the crime. In this regard, the judge may decide to satisfy the motion for arrest of property in the corresponding amount.

When considering a motion for arrest of property in order to ensure the enforcement of the sentence in the part of probable confiscation of property, the judge is obliged to verify whether the crime, of which the person is suspected or accused, is listed in Part 1 of Article 104<sup>1</sup> of the CrC RF, regulating the grounds and conditions of application of this criminal law measure. Moreover, the judge must make sure that recovery by virtue of enforcement documents is possible from the property of the suspect or accused, indicated in the motion, with due regard to the provisions of Article 446 of the Civil Procedure Code of the Russian Federation.

14. When property is arrested, which belongs to other persons, who are not the suspect, accused or persons materially responsible for their actions in accordance with the law, the requirements of Part 3 of Article 115 of the CrPC RF should be taken into account. In accordance with those provisions, in the operative part of the ruling to satisfy the motion, the judge must stipulate limitations pertaining to ownership, use and disposal of the arrested property. For example, such limitations may be expressed in prohibition to dispose of such property through contracts of sale and purchase, loan, gift, pledge and through other transactions which may result in alienation or encumbrance of that property.

The operative part must also indicate the term of arrest of property, determined by the judge with regard to the term of preliminary investigation established for the criminal case and to the time necessary for transfer of the criminal case to the court; this term may later be prolonged in the manner stipulated in Article 115<sup>1</sup> of the CrPC RF.

15. When considering the issue of performance of an investigative action pertaining to realisation, utilisation or destruction of material evidence, the judge must make sure that the items indicated in the motion were seized and recognised as material evidence in the manner stipulated in law, and also that there are circumstances precluding storage of material evidence in the criminal case or its

return to the owner (with regard to requirements of Part 2 of Article 82 of the CrPC RF).

16. Proceeding from provisions of Part 5 of Article 165 of the CrPC RF, the court must verify not only the lawfulness of the decision of the investigator, inquiry officer to perform the investigative action, but also whether they complied with the norms of the law of criminal procedure in performing that action. In particular, the judge must ascertain that the performed investigative action pertains to those listed in Part 5 of Article 165 of the CrPC RF; that there were circumstances indicating the need to perform it immediately; that the investigator, inquiry officer complied with the manner of adoption of such a decision; and also that requirements of the law of criminal procedure were not violated during the investigative action.

For example, exceptional circumstances, in which it is impossible to postpone an investigative action, include situations when it is necessary to take measures of prevention or suppression of crime; when delay in the performance of the investigative action will allow the suspect to abscond; when there is real threat of destruction or concealment of items or instruments of crime; when there are sufficient grounds to presume that a person located on the premises or in another place, in which the investigative action is performed, is concealing on itself items or documents that may have significance for the criminal case.

17. The courts should take into account that where there is a motion filed by a person, whose constitutional right was limited by an investigative action performed in a situation where no delay was possible, by that person's defence lawyer and statutory representative, as well as by other interested persons, they must be provided with an opportunity to participate in the verification performed by the court in regard of lawfulness of such an investigative action in accordance with the rules of Part 5 of Article 165 of the CrPC RF, and also with an opportunity to appeal against a court decision adopted after that verification. For these purposes they are notified of the place, date and time of the court session, a copy of the court decision is forwarded to them.

18. Taking into account the provisions of Item 53<sup>3</sup> of Article 5 and Part 1 of Article 127 of the CrPC RF, a ruling of a judge adopted in the manner stipulated in Article 165 of the CrPC RF is an interlocutory court decision, which may be appealed against independently in appellate proceedings. By implication of law, an appeal against the ruling to perform an investigative action does not suspend the execution of such a ruling.

Since the satisfaction of a motion for realisation, utilisation or destruction of property recognised as material evidence involves the forcible termination of property rights to this property, the judge's decree is subject to execution only after it becomes effective.

The courts should take into account that the law of criminal procedure does not grant the officials of inquiry bodies and bodies of preliminary investigation the right to appeal against a ruling of a judge, issued in the manner stipulated in Article 165 of the CrPC RF. The lawfulness and substantiation of a judge's ruling may be verified by a higher court on the basis of a prosecutor's appeal or on the basis of appeals of persons, whose rights and lawful interests are affected by the court decision.

19. If the preliminary investigation in the criminal case has been finalized, and the criminal case, in which there is an (prosecutor's) appeal, (prosecutor's) cassation appeal against the ruling of a judge adopted in the manner stipulated in Article 165 of the CrPC RF, has been transferred to the court for consideration on its merits, the court of appeal or cassation refuses to accept the aforementioned appeal, prosecutor's appeal for proceedings or terminates proceedings in their regard, of which the applicant is informed.

At the same time, it is explained to the applicant that her/his arguments regarding the violation of legal requirements in performance of the investigative action and regarding the inadmissibility of evidence acquired as a result of such an action may be considered during the trial in the criminal case, as well as during consideration of the case by a court of appeal or cassation.

20. In view of adoption of this Ruling, Item 12<sup>1</sup> is excluded from the Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 1 of 5 March 2004 "On Court Application of Norms of the Criminal Procedure Code of the Russian Federation".

Chief Justice of the Supreme Court of  
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of  
the Supreme Court of the Russian Federation

V.V. Momotov