

## **ISSUES OF IMPROVEMENT OF THE STAGE OF INITIATION OF A CRIMINAL CASE IN THE CRIMINAL PROCESS OF THE REPUBLIC OF UZBEKISTAN BASED ON FOREIGN EXPERIENCE**

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### **ABSTRACT:**

**The article analyzes the problems of the initial stage of criminal proceedings caused by changes in the criminal procedural legislation. Special attention is paid to the issues of improving the norms regulating the procedure for conducting preliminary inquiries, as well as regulating the stage of initiating a criminal case with the study of foreign experience.**

**Keywords: criminal procedure, pre-trial proceedings, initiation of a criminal case, verification of a crime report, interrogator, investigator, prosecutor's supervision, preliminary inquiry.**

### **INTRODUCTION:**

Access to justice is a fundamental principle of the rule of law in every country. In the Republic of Uzbekistan guarantee of the right of access to justice is one of the important procedural provisions, the implementation of which is carried out by the unconditional and strict implementation of the tasks of criminal procedural legislation. It should be noted that they reflect priority of protecting the rights and legitimate interests of victims of criminal acts that completely meets the requirements of both international legal norms and standards enshrined in the Constitution of our country.

However, it should be noted that legal regulation of the primary stage of pre-trial proceedings on a criminal case and the current practice make it impossible to fully guarantee

the right of citizens to access to fair justice. Unfortunately, there are still facts of illegal and unjustified refusals to initiate criminal case, violations of law.

Thus, initiating a criminal case is the most problematic and controversial in the system of stages of modern criminal proceedings. Because of this, it is the subject of increased attention of both scholars and legislators. In the last decade only, the legal format of this stage has undergone numerous changes.

The stage of initiating a criminal case determines prerequisites for the production of investigative and other procedural actions, as well as evidence collecting mechanism and application of criminal procedural coercion. We believe that the significance of the stage of initiation of a criminal case is also assured by the fact that it predetermines the fate of a criminal case and all procedural activities related to the investigation of a criminal case, as well as during judicial proceedings. It should be noted that the legislator has made serious changes to the norms of the Criminal Procedural Code (CPC) of the Republic of Uzbekistan recently that affect the regulation of criminal proceedings at the first stage of the criminal process. But some scholars in the sphere of criminal procedure support abolition of the criminal case initiation stage in spite of its special role in criminal proceedings.

Furtherly, we will try to analyze the current provisions of the criminal procedural

legislation in order to identify the main problems that require solution.

One of the main problems of the pre-trial stage of criminal proceedings is the fact that the current order of initiation of criminal case can cause indefinite procedural status of certain persons involved in preliminary inquiries.

According to Article 320<sup>1</sup> of the CPC, pre-trial proceedings include preliminary inquiry and investigation of a criminal case. Two forms of the investigation provided in the legislation: inquiry and preliminary investigation realized by interrogators and investigators as well as prosecutors in some cases, established by the CPC.

At the same time, current preliminary inquiry, preceding the adoption of the decision to initiate a criminal case, in fact, is the initial process of investigative study and allows to collect a fairly large amount of evidentiary information.

Due to part 2 of Article 320<sup>2</sup>, part 2 of Article 329 of CPC, in the course of preliminary inquiry such actions as detaining persons, personal search and seizure, crime scene examination, expertise, audit. In addition, competent officials have the right to issue binding orders to carry out operative-investigation measures, request additional documents and explanations, from applicants as well. At the same time, this very stage creates a significant procedural gap, since a very uncertain legal status of the persons, who will be required documents and explanations, as well as the applicants does not allow them to realize their rights and legal interests from the willing perspective, and even the volume of these rights is almost negligible.

Meanwhile, it should be noted that although in the national jurisprudence a lot of attention is paid to proceeding appeals of individuals and legal entities, however, a statement about the commission of a crime is fundamentally different from other types of

appeals, both in the procedure for acceptance and in the procedure for consideration. Unfortunately, procedural issues, in particular the initiation of a criminal case as a result of consideration of the appeal, has not yet been given due attention in legal science.

Thus, Article 321 of CPC states that the inquiry officer, investigator, prosecutor and official of the body conducting preliminary inquiry, within its competence, are obliged to initiate a criminal case on a crime in all cases where there are sufficient causes and reasons. According to part 3 of Article 39<sup>2</sup> of CPC, urgent actions are carried out in order to prevent commission of a crime, collect and preserve the evidence, detention of a suspect, as well as providing compensation for property damage caused by the crime. From these provisions of CPC it can be concluded that the preliminary inquiry, in fact, has no normative-legal guarantee of such procedural rights as the right of defense, refusal to provide documents, refusal to give explanations, to appeal against actions (lack of action) and decisions of officials of state bodies carrying out preliminary inquiry. The fact is that the legislation does not regulate the respective responsibilities of officials carrying out preliminary inquiry to clarify the rights and obligations of participants of preliminary inquiry in this stage of proceedings.

In fact, CPC of the Republic of Uzbekistan is not paying due attention to such persons because it is presumed that they can acquire relevant rights after processing of their procedural status (as a rule, suspect, victim, witness or civil party). At the same time, suspect, victim, witness can exercise the right to the services of a lawyer and any person can bring complaints about the actions (lack of action) of officials in case they believe that there are grounds for this.

As shown by the practice of law, when studying the information about committed or planned crime, law enforcement agencies often have

specific data about the person who committed a crime, as well as those who are its victims, but the data is not yet sufficient for the recognition of the former as suspect and the latter as victims, and therefore in the process of communication and in some procedural documents, they are referred to as suspect and victim appropriately. Although such naming of these persons reliably reflect their actual position in the pre-investigation criminal process, from a legal point of view, their participation is not regulated in any way in the current criminal procedural legislation. So, the question how to call the given parties is still open and still debated in the literature. It is no accident reflecting the marked problem in the literature it is proposed to solve the issue through adding to the Criminal Procedural Code a special rule stating: "A suspect during preliminary inquiry is a person that is brought to a competent state authority on suspicion of committing a crime. The suspect has the right: to refuse to testify, present evidence, to apply for additional procedural actions, to object to the grounds for refusal to initiate a criminal case, and in case of refusal to initiate a criminal case, to demand the continuation of the proceedings in the usual order; to review the materials of preliminary inquiry in case of refusal to initiate criminal case; to appeal against the actions and decisions of officials, carrying out proceedings. The fact of explanation of the rights of the suspect is indicated in the delivery protocol".

Victim of a crime, i.e. a person who has suffered moral, physical or property damage, is also an interesting procedural figure among other subjects of preliminary inquiry. In the consequence of damage and difficulties, victim not only suffers, but also desperately needs the protection of his violated rights and corresponding legitimate interests. Reflecting the actual situation of such persons both in everyday life and in the practice of law

enforcement agencies, they are called victims, it is offered to legislatively regulate their legal status in the pre-investigation criminal process.

It is clear that both parties (suspect and victim) have their own interest in the same proceedings, and on the basis of this, they are not only among the persons concerned, but also belong to a general system of those whose rights and legitimate interests must be ensured in the preliminary inquiry. Since a person suspected of committing a crime experiences a number of legal and actual influences on the part of law enforcement agencies in the process of criminal proceeding (for example, when he is brought to the state body of inquiry, questioning, making demands to answer the questions imposed, etc.), then he naturally need to have both rights and corresponding responsibilities, which means he can count on the help of persons and bodies conducting the process, to ensure his rights and legitimate interests.

At the same time, Russian authors emphasize that the Russian legislator did not just fill the gap in March, 2013 by establishing the receipt of explanations as a means of verifying a crime report. At the same time, he included in the Criminal Procedure Code of the Russian Federation the most important norms aimed at protecting the rights of participants of the "preliminary inquiry" and ensuring their safety. So, in order to implement the principle of protecting the rights and freedoms of a person and citizen in criminal proceedings, Article 144 of the Code of Criminal Procedure of the Russian Federation is supplemented with part 1.1., that indicates the need to apprise the persons involved in procedural actions of their rights and obligations when checking a crime report, and to ensure the possibility of exercising these rights, incl. the right not to testify against oneself, one's spouse (wife) and other close relatives, to use the services of a lawyer, as well as to lodge complaints about the actions (lack of action) and decisions of the law enforcer. In

addition to the above mentioned, the authors consider it expedient to expand the existing list, allowing interrogation of the applicant during the "preliminary inquiry" (more clearly establishing the status of this participant in the process at the same time) and eyewitnesses of the incident. This would facilitate procedural economy and maintain a reasonable time frame for legal proceedings.

As it was noted above, participation of persons, in respect or by the claims of whom preliminary inquiry is held, in investigative and legal proceedings is not defined by the provisions of the CPC of the Republic of Uzbekistan. Accordingly, justice principles acquire declarative elements: on the one hand they are fixed by law, on the other hand, there is uncertainty in legal guarantee for them at a certain stage.

Also, the most common mistake at the stage of preliminary inquiry is the premature decision to refuse to initiate a criminal case on the basis of insufficient information, when circumstances without which the absence of an event or corpus deficit cannot be considered proven have not yet been fully established, or other grounds excluding the initiation of a criminal case. Some indications of such circumstances exist in the materials of the preliminary inquiry, but these data are contradictory and raise doubts about their reliability. To clarify them, an investigation or additional explanations are required. Conducting an additional inquiry allows to collect sufficient data to initiate a criminal case or reasonably refuse to initiate a criminal case. Faced with such a refusal on unfinished material, prosecutors cancel the decisions or return the material imposing additional check. But in law enforcement practice, there are often such cases when the decision to refuse to initiate a criminal case are adopted several times on the basis of appeals of interested persons, despite the cancellation of the initial

decision by the prosecutor imposing additional check, and this all leads to repeated checks taking a long time. Meanwhile, long-lasting preliminary inquiries can lead to other adverse consequences due to the failure to bring the relevant persons to criminal responsibility and by using of a preventive measure. The growth of citizens' complaints also needs careful attention as they are connected with facts of unlawful initiation of criminal cases or, on the contrary, with unjustified refusals to initiate them. The main factors are the immense workload of bodies carrying out preliminary investigation, low qualification of officials involved in the process, and the factor corruption component.

In fact, the initial stage of pre-trial proceedings in a criminal case leaves significant freedom of discretion of the person checking the crime report. In this regard, there are not only cases of hiding this information from the registration, but also various other violations of the law, including those related to jurisdiction.

As a result of abuse by officials, the following consequences can occur:

- Failing to register the received crime report;
- Adoption of an illegal and unjustified procedural decision to initiate a criminal case;
- Adoption of an illegal and ungrounded procedural decision to refuse to initiate a criminal case;
- Unreasonable delay in adopting procedural decision on a crime report.

Of course, in this aspect, prosecutorial supervision is an important lever that allows relatively painless protection of the violated rights of applicants. However, it cannot be considered a panacea, because:

Firstly, it is performed, usually after breach of law has occurred (postfactum);

Secondly, prosecutors are physically unable to check all the materials of preliminary inquiry or criminal cases;

Thirdly, the public prosecutor's supervision cannot replace the required norm in the CPC of

the Republic of Uzbekistan and provide procedural guarantees of access to justice.

It is worth noting that in some post-Soviet states (Ukraine, Kazakhstan, Georgia, Belarus) there are some positive examples of solutions to this problem. They can be taken into account when improving CPC of the Republic of Uzbekistan.

In particular, Criminal Procedural Codes of Ukraine and Kazakhstan have interesting mechanism - the Unified Register of pre-trial investigations (hereinafter - ERDR). To a certain extent, its analogue exists in the Republic of Uzbekistan in the form of records (where all criminal cases are registered) of the Department of criminal-legal statistics of the General Prosecutor's Office of the Republic of Uzbekistan and the corresponding departments in the prosecutor's offices of Karakalpakstan, regions and Tashkent city.

In accordance with Article 214 of the CPC of Ukraine pre-trial investigation starts from the moment of recording of report about a crime in ERDR. Before that, only one urgent investigative action - inspection of the scene - can be carried out. In case signs of a criminal offense are revealed on a sea or river vessel located outside Ukraine, pre-trial investigation begins immediately, information about it is entered into the Unified Register of Pre-trial Investigations at the earliest opportunity.

In the same way, Article 179 of the CPC of Kazakhstan requires registration of information about the committed crime. The applicant is issued a registration document certifying registration of his statement or report about a crime with indication of the person who received the statement, time of registration and time when the decision must be made. In both states, the prosecutor is the head of the pre-trial investigation which contributes to the improvement of its quality.

Part 1 Article 100 of the CPC of Georgia imposes the obligation to start the investigation on the investigator and the prosecutor's.

According to Article 172 of the Code of Criminal Procedure of Belarus, criminal prosecution body is obliged to accept, register and consider a statement or report on any committed or impending crime. The applicant is issued a document on registration of the accepted statement or message about a crime, indicating the official who accepted the statement or message, and the time of its registration.

It should be noted that national legislation at the stage of initiation of a criminal case provides for a greater procedural activity of the bodies carrying out preliminary inquiry, the interrogating officer or the investigator, and the role of the prosecutor is more of a supervisory nature, although Article 320<sup>2</sup> of the CPC reflects that the preliminary inquiry can also be carried out by the prosecutor.

CPC of Kazakhstan, Georgia and Ukraine abolished the mechanism of preliminary inquiry for messages about a crime by admitting administrative character of procedural decision to start pre-judicial investigation, and by giving prosecutor the competence of administering this process (Articles 36, 214 of the CPC of Ukraine, Article 32 of the CPC of Georgia, and Article 58 of the CPC of Kazakhstan). In other words, in criminal proceedings of Ukraine, Kazakhstan, and Georgia prosecutor's supervision at the initial stage of pre-trial criminal proceedings organizes investigation both from substantive and procedural points of view.

For instance, current criminal procedural legislation of Ukraine actually abolished the stage of initiation of a criminal case and for those participating in the initial stage of pre-trial proceedings in a criminal case, the following guarantees are provided:

- Authorized officers are obliged to accept the message about a crime and to register appropriate information in the ERDR (Part 1 of Article 214 if CPC);

- Failing to fulfil this duty may be subject to judicial review (Article 303 Code of CPC);
- Established positions of investigating judge who is endowed with a number of powers to authorize certain investigative actions limiting rights and freedoms of citizens.

In addition, according to part 2 of Article 55 of the CPC of Ukraine the rights and obligations of the victim arise from the moment of submission of the application about the committed against him crime. This provision guarantees the implementation of other rights to a greater extent, including the right to use services of a representative, and can work quite effectively. Other participants of the process acquire their legal status in a similar way, as proceedings on the case are conducted in full and without restrictions from the moment the information is registered in the ERDR.

Currently, many researchers also recognize the institution of initiation of criminal case, which has been preserved in the Criminal Procedure Code of many post-Soviet countries from the old times, as an "exclusive" anachronism that has no analogues in foreign legislation, sometimes making criminal procedural activities laborious and ineffective. Nevertheless, not all scientists agree on a radical reform of this stage, considering it excessively costly.

We believe that though the cost of rebuilding preliminary inquiry process may be substantial, creation of an effective mechanism for protection of persons affected by crime is more important in the aspect of the value of the rights and freedoms of an individual, while ensuring of which no use reckoning with costs.

By the way, in Ukraine, Georgia and Kazakhstan, after the innovations, no collapse of pre-trial proceedings occurred, and the practice of applying the new provisions of the criminal procedure law made it possible to increase the protection of citizens.

Thus, the initial stage of pre-trial proceedings in a criminal case is still not free from shortcomings that create obstacles for a quick and timely response to citizens' appeals and other reasons for initiating a criminal case. However, in criminal proceedings effectiveness of preliminary inquiry, as the initial stage of pre-trial proceedings, is of great importance because quick respond to every crime requires creation of a legal regulation of criminal procedure relations, excluding long-lasting check of received messages without ensuring the necessary procedural rights of participators of this stage.

#### REFERENCES:

- 1) A. Otazhonov, B. Khuzhakulov. Ichki ishlar organarining murozhaatlar bilan ishlash faoliyati. // J. Bulletin of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. - №1 (2017). - P.3 - 9; S. Yusupov. Zhismony Islands legal property shahslari murozhaatlarining taallukliligi masalalari. // J. Lawyer - No. 2 (2017). - pp. 29-32; I. Isaev, S. Shamsiddinov. Murozhaat ortida inson bor. // J. Calcon. - No. 6. (2017). - P.5-6.
- 2) Nutrition Borotba s i zlochinn i STU. - H., 2008. Vip. 15.- 324 p.
- 3) Zelenetsky V.S. Pre-investigation proceedings in the criminal procedure of Ukraine: Monograph. - Kharkov: Crossroad, 2009. - pp. 35-36.
- 4) Novikov S.A. Pre-investigation materials in the proof of criminal cases: current problems and new approaches. // Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia. - 2013 - No. 3 (59). - P.71-72.
- 5) Skoblikov P.A. Counteraction of law enforcement officers to the initiation of criminal cases: a system of typical techniques and tricks. // Law. - 2016. - No. 7. - P. 92 - 105.

- 6) Abramenko A.A. Actual issues of reforming the initial stage of pre-trial proceedings in a criminal case . // Actual problems of jurisprudence: collection of articles. Art. by mater. V int . scientific - practical . conf . No. 5 (5). - Novosibirsk: SibAK , 2017 .-- S. 126 - 134.
- 7) Makhov V.N. Features of pre-trial proceedings in the criminal process of the Russian Federation . // Bulletin of the Peoples' Friendship University of Russia. Series "Legal Sciences". - 2015. - No. 1. - P. 24-28 ;
- 8) <sup>1</sup> Volevodz A.G. Abolition of the stage of initiation of a criminal case: the price of the issue . // Criminal process. - 2014. - No. 1. - P. 80 - 83.
- 9) Volevodz A.G. Abolition of the stage of initiation of a criminal case: the price of the issue . // Criminal process. - 2014. - No. 1. - P. 80 - 83.
- 10) Shadrin V.S., Mukhametzhanov A.O. The initial stage of pre-trial proceedings: implementation problems in Russia and the result of reform in Kazakhstan . // Bulletin of the South Ural State University. Series "Right". - 2017. - T. 17. - No. 2. - P. 42 - 46.