

ACTUAL ISSUES OF IMPROVING THE INITIAL STAGE OF THE CRIMINAL PROCESS

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ABSTRACT

This article discusses topical issues of conducting a pre-investigation check in a criminal case. In the world criminal proceedings, special attention is paid to ensuring the "right of an individual to a trial within a reasonable time", improving the criteria and forms of differentiation of the criminal procedural form, critical assessment of existing procedural forms, the introduction of new procedural forms based on the public danger of a crime, the creation of effective mechanisms for resolving criminal disputes. In this regard, there is an urgent need to improve some institutions and the procedural order of investigative actions of the national criminal procedure legislation.

KEYWORDS

pre-investigation check, personal law, justice, procedural forms, inquiry, investigation, investigation, refusal to initiate criminal proceedings, suspect, victim.

Introduction

In the Republic of Uzbekistan, ensuring the right to access to justice is one of the most important procedural guarantees, the implementation of which is carried out by unconditionally and strictly fulfilling the tasks of criminal procedure legislation defined in the provisions of article 2 of the Criminal Procedure Code of the Republic of Uzbekistan. It should be noted that they reflect the priority of protecting the rights and legitimate interests of persons affected by criminal acts, which fully meets both international legal norms and the norms enshrined in articles 25-27 of the Constitution of our country.

At the same time, it should be noted that the normative regulation of the primary stage of pre-trial proceedings in a criminal case and the existing practice do not fully guarantee the right of citizens to access fair justice. Unfortunately, cases of illegal and unjustified refusals to initiate criminal proceedings and gross violations of laws are still being recorded. In this regard, President of the Republic of Uzbekistan Shavkat Mirziyoyev emphasizes that "... the adoption of laws is only part of the work. The main issue is timely informing the people and responsible executors of the essence and meaning of laws, organizing their correct implementation and ensuring strict compliance with their requirements "[1]. We believe that the implementation of the tasks set by the head of state requires improving the quality and efficiency of legal work, primarily in the law enforcement system. Meanwhile, violations of the criminal procedure law make it impossible for citizens to exercise their rights to access justice. This is due to the fact that the current procedural procedure for initiating a

criminal case leads to the fact that the procedural status of some persons participating in the pre-investigation check, in fact, remains uncertain.

According to article 320.1^{of} the Criminal Procedure Code, pre-trial proceedings include a pre-investigation check and investigation of a criminal case. The legislation provides for two forms of investigation: an inquiry and a preliminary investigation, which is carried out by inquirers and investigators, as well as by prosecutors in cases established by the Code of Criminal Procedure.

At the same time, today the pre-investigation check that precedes the decision to initiate a criminal case, in fact, is the initial process of investigative knowledge, and allows you to collect a fairly large amount of evidentiary information.

By virtue of part 2 of Article 320.2², part 2 of Article 329 of the Criminal Procedure Code of the Republic of Uzbekistan, during a pre-investigation check, a person may be detained, as well as such investigative actions as a personal search and seizure, an inspection of the scene of an accident, an expert examination, and an audit is appointed. In addition, competent persons have the right to give mandatory instructions on conducting operational search activities, to request additional documents and explanations, including from applicants. At the same time, there is a significant procedural gap in this part, since the very uncertain legal status of the persons from whom documents and explanations are requested, as well as applicants, does not allow them to exercise their rights and legitimate interests in the perspective they want, and the scope of these rights is insignificant.

Meanwhile, it is worth noting that although the national jurisprudence pays a lot of attention to the work with appeals of individuals *иных лиц уделяется немало внимания* legal entities [2], however, an application for committing a crime is radically different from other types of appeals, both in terms of the procedure for accepting and the procedure for consideration. Unfortunately, it is precisely procedural (procedural) issues, in particular the initiation of criminal proceedings, as a result of consideration of the appeal, that are not yet given due attention in legal science.

Thus, article 321 of the Criminal Procedure Code of the Republic of Uzbekistan states that an inquirer, investigator, prosecutor and an official of the body conducting a pre-investigation check, within the limits of their competence, are obliged to initiate a criminal case on a crime in all cases where there are reasons and sufficient grounds for this. According to part 3^{of Article 39.2} of the Criminal Procedure Code of the Republic of Uzbekistan, urgent actions are carried out in order to prevent or prevent the commission of a crime, collect and preserve evidence, detain a suspect in the commission of a crime and search for fugitive suspects, as well as to ensure compensation for property damage caused by a crime. From these provisions of the Criminal Procedure Code of the Republic of Uzbekistan, it can be concluded that during a pre-investigation check, in fact, the procedural right to defense, the right to refuse to provide documents, the right to refuse to give explanations, the right to appeal against the actions (inaction) of officials of the bodies conducting the pre-investigation check and their decisions remain without regulatory consolidation. The fact is that the current legislation does not regulate the corresponding duties of officials of bodies conducting pre-investigation checks to explain the rights and obligations of participants in pre-investigation checks in relation to this stage of the criminal process. In fact, the Code of Criminal Procedure of the Republic of Uzbekistan does not pay due attention to the status of such persons, since it is assumed that they can acquire the corresponding rights after registration of their procedural status (usually as a suspect, victim, witness or civil plaintiff). At the same time, a suspect, a victim, or a witness can use the right to lawyer's services, and any person who believes that there are grounds for this can bring complaints about the actions (inaction) of officials.

As legal practice in Ukraine shows, in the course of research on information about a crime committed or being prepared, law enforcement agencies often have well-defined data about the person who committed the crime, as well as about those who are its victims, but not yet sufficient to recognize the former as suspects and the latter as victims, and therefore in the process of communication, and in some procedural documents, the former are called suspected of committing a crime, and the latter – victims of it. Although such names of these persons reliably reflect their actual position in the pre-investigation criminal process, from a legal point of view, the current criminal procedure legislation does not regulate their activities in any way. Therefore, the question of how to properly name these subjects remains open and continues to be discussed in the literature. It is not by chance that, reflecting this situation, a proposal is made in the specialized literature to resolve this issue in a legislative manner, adding a special norm to the Code of Criminal Procedure of the following content: "A person who is brought to the competent state body on suspicion of committing a crime is considered suspected of pre-investigation criminal proceedings. The suspected person has the right: to refuse to give evidence; to present evidence; to request additional pre-investigation procedural actions; to object to the grounds for refusal to initiate criminal proceedings, and in case of refusal to initiate criminal proceedings – to demand continuation of the proceedings in the usual manner; to get acquainted with the materials of pre-investigation proceedings in case of refusal to initiate criminal proceedings; to appeal actions and decisions production officials. The explanation of rights to the suspected person is indicated in the delivery protocol" [3].

Among other subjects of pre-investigation proceedings, an equally interesting procedural figure is the victim of a crime, i.e. a person who has suffered moral, physical or property damage. Suffering a variety of hardships and hardships in connection with such consequences, the named person, in one way or another, in any case not only suffers, but also urgently needs to protect their violated rights, and therefore the 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, while offering to legally regulate their legal status in pre-investigation criminal proceedings [4].

It is clear that both persons have their own interests in the same proceedings and, on this basis, are not only among the interested parties, but also belong to the general system of those whose rights and legitimate interests should be ensured in pre-investigation criminal proceedings. Since a person suspected of committing a crime experiences a number of legal and factual influences from law enforcement agencies in the course of criminal procedure proceedings (for example, when he is brought to the body of inquiry, interviewed, required to answer questions, etc.), he should naturally have both rights and corresponding duties, this means relying on the help of persons and bodies conducting the process, ensuring the implementation of their rights and legitimate interests [5].

Taking into account possible situations in practice, we believe it is possible to define in the domestic legislation procedural guarantees for citizens who may later acquire one or another procedural status:

- for the suspected person – the duty of the body conducting the pre-investigation check to accept a statement of guilt, explain the rights and obligations of the person in respect of whom the pre-investigation check is being conducted (the right to a lawyer, refusal to give explanations, etc.);
- for the victim – the duty of the body carrying out the pre-investigation check to accept the application, report on the crime, explain the rights (including compensation for damage), conduct a pre-investigation check, and ensure their safety;

– for persons who receive explanations – it is the duty of the body conducting the pre-investigation check to explain to them the right not to incriminate themselves, to use the services of a lawyer, and to ensure their safety.

We consider it necessary to draw attention to another gap in the Code of Criminal Procedure. Thus, according to part 2 of Article 329 of the Code of Criminal Procedure, additional documents and explanations may be requested during a pre-investigation check, as well as a person may be detained, a personal search and seizure in accordance with part two of Article 162 of the Code of Criminal Procedure, an inspection of the scene of an accident, an expert examination, an audit is appointed, and instructions are given to conduct operational search measures. It is prohibited to perform other investigative actions during the pre-investigation check. During the appointment of an expert examination, it is often necessary to conduct another investigative action, such as obtaining samples for expert examination. However, the pre-investigation inspection bodies cannot perform this investigative action because this investigative action is not listed in part 2 of Article 329 of the Code of Criminal Procedure and according to this norm it is prohibited to perform other investigative actions other than those listed in this article of the Code of Criminal Procedure. In addition, article 189 of the Code of Criminal Procedure does not specify pre-investigation bodies among the persons and bodies entitled to receive samples for expert research.

As we noted earlier, the participation of persons in respect of whom a pre-investigation check is being conducted, or on whose applications it is being conducted, in the production of investigative and procedural actions, is not defined in the provisions of the Criminal Procedure Code of the Republic of Uzbekistan. Accordingly, the principles of justice acquire elements of declarative nature: on the one hand, they are legally fixed, on the other hand, there is a legal uncertainty in their guarantee at a certain stage.

In fact, the initial stage of pre-trial proceedings in a criminal case leaves a wide margin of appreciation for the person who checks the report of a crime. In this regard, there are not only cases of hiding this information from accounting, but also various other violations of the law, including those related to jurisdiction and jurisdiction [6].

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

- concealment of the received crime report from registration;
- making an illegal and unjustified procedural decision to initiate a criminal case;
- making an illegal and unjustified procedural decision to refuse to initiate criminal proceedings;
- unjustified delay in making a procedural decision on reporting a crime.

Of course, in this aspect, prosecutor's supervision is an important lever that allows you to protect the violated rights of applicants relatively painlessly. However, prosecutor's supervision cannot be considered a panacea:

first, it is carried out, as a rule, after the violation (after the fact);

secondly, prosecutors cannot physically check all materials of pre-investigation checks or criminal cases;

Third, prosecutor's supervision cannot replace the required norm of the Criminal Procedure Code of the Republic of Uzbekistan and provide procedural guarantees of access to justice.

It is worth noting that in a number of post-Soviet states (Ukraine, Kazakhstan, Georgia, Belarus) there are already positive examples of solving this problem. They can be taken into account when improving the Criminal Procedure Code of the Republic of Uzbekistan.

In particular, the Criminal Procedure Codes of Ukraine and Kazakhstan provide for such an interesting mechanism – the Unified Register of Pre-Trial Investigations (hereinafter-ERDR). To a certain extent, its similarity exists in the Republic of Uzbekistan in the form of records of the Department of Criminal and Legal Statistics of the Prosecutor General's Office of the Republic of Uzbekistan and corresponding departments in the prosecutor's offices of Karakalpakstan, regions and Tashkent, where all criminal cases are registered.

Article 179 of the Criminal Procedure Code of Kazakhstan requires registration of information about the crime committed. The applicant is issued a document on registration of the accepted application or message about a crime, indicating the person who accepted the application or message, the time of its registration and the time when the decision should be made. In both countries, the prosecutor acts as the head of the pre-trial investigation, which contributes to improving its quality.

Part 1 of Article 100 of the Code of Criminal Procedure of Georgia imposes on the investigator and prosecutor the obligation to start an investigation after receiving information about a crime.

According to article 172 of the Criminal Procedure Code of the Republic of Belarus the organ of criminal prosecution is obliged to accept, register and consider an application or report on any crime committed or being prepared. The applicant is issued a document on registration of the accepted application or message about a crime, indicating the official who accepted the application or message, and the time of their registration.

It should be noted that the national legislation at the stage of initiation of criminal proceedings provides for greater procedural activity of the bodies conducting pre-investigation checks, the inquirer or investigator, and the role of the prosecutor is more supervisory in nature, although article 320² of the Code of Criminal Procedure reflects that a pre-investigation check can also be carried out by the prosecutor.

The Criminal Procedure Codes of Kazakhstan, Georgia and Ukraine refused the mechanism of pre-investigation verification of reports of a crime, recognizing the administrative nature of the procedural decision to start a pre-trial investigation, authorized the prosecutor to direct it (Articles 36, 214 of the Criminal Procedure Code of Ukraine, Article 32 of the Criminal Procedure Code of Georgia, Article 58 of the Criminal Procedure Code of Kazakhstan) [7]. In other words, in the criminal proceedings of Ukraine, Kazakhstan and Georgia, the supervision of the prosecutor at the initial stage of pre-trial proceedings in a criminal case organizes the investigation from both substantive and procedural positions.

Currently, many researchers recognize the institution of initiating criminal proceedings, which has been preserved in the Criminal Procedure Code of many post-Soviet countries since earlier times, as an "exclusive" anachronism that has no analogues in foreign legislation, sometimes making criminal procedure work-intensive and ineffective [8]. However, not all scientists agree on a radical reform of this stage, considering it excessively costly [9].

We believe that the costs of reorganizing pre-investigation work, although they may be significant, but the creation of an effective mechanism for protecting persons affected by crimes, is more important in terms of the value of individual rights and freedoms, while ensuring which costs cannot be taken into account.

By the way, in Ukraine, Georgia and Kazakhstan, after the innovations, no collapse of pre-trial proceedings occurred, and the practice of applying new provisions of the criminal procedure law made it possible to increase the protection of citizens [10].

Thus, the initial stage of pre-trial proceedings in a criminal case is still not free from shortcomings that create obstacles to rapid and timely response to citizens' appeals and other reasons for initiating criminal proceedings. However, in criminal proceedings, it is the effectiveness of the pre-investigation check, as the primary stage of pre-trial proceedings, that is of great importance, since prompt response to each crime requires the creation of a legal regulation of criminal procedure relations, which excludes long-term verification of the received application or message without providing the necessary procedural guarantees of the rights of persons participating in the verification stage.

Based on the above, we consider it necessary to agree with some of O. A. Malysheva's suggestions on the expediency of identifying the following areas for improving criminal procedure legislation:

First, an article should be fixed in the Code of Criminal Procedure that provides for the mandatory acceptance and consideration of applications and reports on a crime and its immediate registration in the presence of the applicant or an interested person (representative), indicating that refusal to accept a report on a crime is not allowed;

Secondly, it is necessary to define in more detail the procedure for conducting a pre-investigation check, indicating specific provisions on the legal status of persons participating in the pre-investigation check stage, on the mechanism for implementing the rights and freedoms of these persons, using references to the norms of the Criminal Procedure Code regulating the procedural status of a suspect, accused, victim, witness [11].

In our opinion, it is currently not possible to eliminate the stage of initiation of criminal proceedings in the criminal process of the Republic of Uzbekistan from the point of view of sufficient staffing and financing of investigative activities. Therefore, during the transition period, it is necessary to expand the list of investigative actions allowed under the pre-investigation check, improve the procedure for accepting statements and reports on a crime, as well as explain the rights of participants in the pre-investigation check.

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