



THE ISSUES OF CONSIDERING REPORTS AND ALLEGATIONS OF CRIMES

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Article history:	Abstract:
Received: March 26 th 2021 Accepted: April 7 th 2021 Published: April 26 th 2021	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.

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

The procedure for making decisions on reports and statements about a crime has always been and remains the subject of close attention of process scientists who include it, since the procedural procedure is the first stage of the criminal process - the stage of initiating a criminal case. The tasks assigned to the criminal process by the legislator can be implemented only if, at the stage of initiating a criminal case, a legal and reasonable decision has been made to initiate a criminal case or a decision has been made to initiate a criminal case.

It is at this first stage of criminal proceedings that an intensive search, recording and removal of traces of the crime takes place, as well as work to establish the objective truth. An analysis of law enforcement practice on issues related to the refusal to initiate criminal proceedings has shown that it is when making such procedural decisions that the most common mistakes are made by officials of the preliminary investigation bodies, leading both to the loss of the evidence base and to an unjustified refusal to initiate criminal proceedings, which in the future often leads to the inability to restore the rights of citizens, organizations and the state and to compensate them for harm¹.

In this regard, it is relevant to conduct a detailed analysis of this stage regarding its problems and solutions using the comparison method.

The tasks of the stage of initiation of a criminal case are, firstly, to identify presence or absence of conditions for carrying out criminal procedural activities in a criminal case; secondly, establishment of facts that, under certain circumstances, may exclude criminal case (grounds for refusing to initiate a criminal case or terminate a criminal case)². By virtue of the principle of publicity of criminal procedural relations, the right to make an appropriate procedural decision at the stage of initiation of a criminal case within their competence belongs to the prosecution as participant of criminal proceedings, i.e. those participants who carry out criminal prosecution in the process of criminal proceedings. In addition, due to special circumstances, the right to make a procedural decision to initiate a criminal case and to issue an appropriate decision belongs to some officials as well.

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.

¹ Khidoyatov B. Stages Of Legal Regulation Of Inquiry In The Republic Of Uzbekistan. The American Journal of Political Science Law and Criminology. 2020 Nov 30;2(11):179-86.

² Bazarova D. B. Procedural safeguards in investigating and adjudicating criminal cases by summary procedure //Theoretical & Applied Science. – 2016. – №. 12. – C. 34-37.

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 320¹ 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 320², 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 39² 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.³

Taking into account possible situations in practice, we believe it is possible to define in domestic legislation procedural guarantees for citizens who may subsequently acquire a procedural status:

- for suspected - the duty of the authority conducting preliminary inquiry to take a statement of guilt, apprise the rights and duties (the right to counsel, the right to refuse to give explanations, etc.);

- for the victim - the duty of the body carrying out the preliminary inquiry to accept the statement, the report of the crime, to explain the rights (including for compensation for damage), to carry out the preliminary inquiry, to ensure his safety;

- for persons who provide explanations - the duty of the authority conducting preliminary inquiries to explain their the right not to incriminate themselves, the right to counsel, to ensure their safety.

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 delicti 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.⁴

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.

In conclusion, we want to note, that a number of provisions of the Criminal Procedural Code of the Republic of Uzbekistan have inaccuracies and gaps in the legal procedural regulation of both preliminary inquiry and initiating of criminal case. We also consider that the given proposals on the improvement of national criminal procedural legislation will contribute to strengthening of guarantees of citizens' access to justice and to combating unjustified involvement of citizens to the field of criminal justice, as well as to optimize the work of officials of state bodies involved in preliminary inquiry, interrogation, investigation and prosecution at the initial stage of pre-trial proceedings.

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