

PRELIMINARY INVESTIGATION CONCEPT

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Abstract: Comments are made in this article to the definition of the preliminary investigation concept institute; the views of various scholars in this area are studied and analyzed.

Keywords: preliminary investigation, to initiate criminal proceedings, law, notice, application, decision.

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Introduction. In his speech on the occasion of the 27th Anniversary of the Constitution of the Republic of Uzbekistan, President Shavkat Mirziyoyev noted that the effectiveness of any democratic reforms, the main guarantee of peace and development is directly related to the Constitution and ensuring the rule of law, as well as providing respect for human rights and freedoms, respect for the dignity of every individual are an integral feature of the open, free and just society we are building.

Over the past three years, large-scale activity has been carried out in Uzbekistan to improve the judicial-legal sphere, and based on humanitarian principles, to ensure that no person's rights and freedoms, honor and dignity are violated and unjustly prosecuted for the act that he did not commit. In order to ensure the effectiveness of the reforms, activities on curbing crime and ensuring the inevitability of liability for criminal acts are important. At the same time, the analysis of preliminary investigation practice shows that there are systemic problems and shortcomings that hinder the effectiveness of the agencies carrying out these activities, which negatively affect the impartiality of the bodies that facilitate the detection of crimes. This, in turn, requires measures to be implemented for improving the preliminary investigation process.

The preliminary investigation concept is a relatively new concept in the criminal procedure law. However, its novelty is not due to the fact that this concept was not used in legal literature, scientific publications or in the course of interviews with practitioners, but due to the Law of the Republic of Uzbekistan No. LRU 442 "On introducing amendments and addenda to certain legislative acts of the Republic of Uzbekistan" of September 6, 2017 and due to the fact that the adoption of the law has a new meaning.

In our opinion, it is necessary to know its lexical meaning in order to properly and fully understand the content of the preliminary investigation concept. There is no general concept of preliminary investigation in the explanatory dictionary of the Uzbek language. However, it is possible to know its lexical meaning by analyzing the words used in the vocabulary of this dictionary.

According to the Article 320² of the Criminal Procedure Code: "The preliminary investigation includes measures to verify statements, messages and other information about crimes, making decisions based on the results of their consideration, as well as measures to consolidate and preserve traces of crime, objects and documents that may be relevant to the case". In our opinion, there are a number of ambiguities in the preliminary investigation concept in this provision of the Law, and to clarify them, we found it necessary to refer to the existing tariffs for preliminary

investigation in the theory of criminal procedure legislation.

To date, there is no consensus in the legal literature on preliminary investigation concept. This shows that this institution is multifaceted. While some scholars interpret the preliminary investigation process as a form of criminal investigation, the second group note the pre-trial phase as an event that takes place before the initial investigation, while the other group describes the pre-investigation process as the activity of certain government agencies, and scholars emphasize that preliminary investigation is a clear concept, an independent stage of the criminal process [1, p.110].

In particular, U.T. Tadjikhanov notes that preliminary investigation is a multifaceted concept and the issue of instituting criminal proceedings, refusing to initiate it is resolved in the process of its implementation [16, p.18].

There is another concept for preliminary investigation, in which it is emphasized that the registration of an application, report or other information about a crime and the conduction of certain investigative and procedural actions to determine the legitimacy and foundations for instituting criminal proceedings, based on the information obtained or identified, the decision-making process to initiate a criminal case or to refuse to initiate a case is understood [5].

According to D.M. Mirazov, the preliminary investigation is the initial stage of the criminal process, in which the application, report and other information about the crimes are examined and the issue of whether or not to initiate a criminal case is resolved. At this stage, the process of protecting the legitimate interests of citizens who have suffered as a result of a crime begins [15].

According to D. Kenjabayev, the preliminary investigation includes measures to investigate criminal applications, reports and other information, to make decisions on the results of their consideration, as well as measures to strengthen and preserve traces of crime, objects and documents relevant to the case. [10].

In our opinion, while the above considerations reflect the process by which scholars relate to the structure of the preliminary investigation phase, these views do not fully disclose the understanding of the nature of the preliminary investigation.

In our opinion, the issue of determining the form of its implementation cannot be ignored when forming the concept of preliminary investigation. There are various opinions in the legal literature on this issue. Some authors have argued that preliminary investigation is carried out using non-procedural methods [13], while other scholars have stated the opposite. For example, according to G.P. Khimicheva, “the preliminary investigation stage is a mandatory organizational part of criminal procedure and has a *procedural nature*” [11]. This view is shared by some other authors. There are other views that differ from this view. Its supporters offer relying on a free method of learning at the preliminary investigation stage, using absolutely voluntary non-procedural methods in gathering information about a crime.

In this regard, L.S. Mirza’s opinion is noteworthy. Because, in his opinion, as a general rule, when a report of a crime is received and there are appropriate grounds, a criminal case should be initiated immediately (i.e. without preliminary investigation stage). At the same time, the author acknowledges that any report of a crime does not immediately lead to the initiation of a criminal case, and as a proposal to address the problem, he proposes to strengthen the law with a detailed list of procedural actions taken during the preliminary investigation [12].

M.G. Kovaleva noted that the information obtained as a result of any action to determine the presence of signs of a crime in the crime report shall not be the basis, uncertainties in the legal nature of the incident must be the result of investigative actions before the investigation established by law [6].

In this regard, according to L.M. Volodina, “a hypothesis-based conclusion cannot be a sufficient guarantee for a decision to be made”. According to V.G. Kosykh, “during the preliminary investigation period, it is not possible to obtain an information necessary to initiate criminal

proceedings on the basis of this report, even if the applicant has provided all the details of the act” [9]. Indeed, in this case it is necessary to at least identify the applicant, warn him of criminal liability for giving false information, which is an integral part of the preliminary investigation, as this activity determines the validity of the reason for instituting criminal proceedings.

In addition to most of the above considerations, it should be noted that during the preliminary investigation phase, information or evidence should have been collected only as a result of procedural actions carried out in the manner prescribed by law.

Another situation that we need to pay attention to is that in the scientific and educational literature, preliminary investigation is usually considered as an integral part of the initiation of a criminal case. Moreover, at this stage, criminal procedure researchers allegedly replace the term “initiating a criminal case” with the term “pre-trial investigation”, defining them as equally powerful and interchangeable [3].

On this issue, A.B. Divayev noted that the initiation of a criminal case at the end of the preliminary investigation would serve to initiate a preliminary investigation, and that the preliminary investigation phase should also be called the criminal prosecution phase [4]. A.P. Ryjakov also expressed the same opinion, according to which the initiation of a criminal case is a period of time during which a specific activity is carried out, which is called the preliminary investigation examination of the application (report) on the crime [14].

It turned out that in the opinion of scientists, the preliminary investigation (initiation of a criminal case) is the first and necessary stage, in which the officer conducting the preliminary investigation, the inquiry officer, the investigator and the prosecutor decide the cause and grounds for instituting criminal proceedings, initiates criminal proceedings or refuses to institute criminal proceedings on existing grounds.

Although the above ideas are common in the legal literature, we believe that these views are controversial. This is because, based on the results of the investigation carried out within the stage of initiating a criminal case, a decision is not only made to initiate a criminal case, to refuse to prosecute. For example, at this stage, the decision is made on the type of legal liability of the application and the information or on the authority of the body in which the proceedings are conducted. Furthermore, the review of criminal applications and reports is, in our view, an independent, initial part of the criminal process, which has all the characteristics that characterize a particular independent stage.

A similar opinion was expressed by A.M. Korolev, in his view, “there is another stage before the stage of instituting criminal proceedings, in which certain actions are taken and the rights and freedoms of the individual are considered” [8].

V.V. Kojokar also expressed a similar view that “..receipt, consideration and resolution of reports of a crime should be considered as the first stage of pre-trial proceedings in a preliminary investigation stage” [1].

It is these factors that led us to conclude that there is a preliminary investigation phase with the status of an independent institute of criminal procedure before the stage of initiating criminal proceedings, which excludes the subsequent stage of initiating criminal proceedings from the stages of the criminal process.

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