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LEGAL REGULATION OF THE PRE-INVESTIGATION CHECK PHASE: PROBLEMS AND SOLUTIONS

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Annotation: In the article, from the point of view of the regulation of the pre-investigation check stage, it is necessary to improve the list of investigative actions during the investigation of crime reports, and the evidence collected during the preliminary investigation can be used without repeating it at the inquiry and preliminary investigation stage.

Key words: conducting pre-investigation check, Criminal Procedure Code of the Republic of Uzbekistan, pre-trial proceedings, inquirer, investigator, prosecutor, investigative actions, legal grounds.

According to the Law of the Republic of Uzbekistan dated September 6, 2017 “On amendments and additions to certain legislative documents of the Republic of Uzbekistan”¹ dated September 6, 2017, amendments and additions were made to the Criminal procedure code of the Republic of Uzbekistan. In turn, in connection with the adoption of this law, the stage of inquisition was regulated and the institution of pre-investigation check was introduced in criminal proceedings.

Today, a number of scholars have recognized the review of criminal applications, messages and other information (pre-investigation) as an independent, separate stage of the criminal process in the system of criminal-procedural law². As a result of the adoption of the above law, along with the development of criminal-procedural legal relations in our country, the institution of pre-investigation check was also motivated to form a full-fledged legal institution of criminal-procedural law.

Although, as a result of the adoption of the above law, the pre-investigation check was formed as a full-fledged legal institution, but it is not without some shortcomings. In particular, according to this law, despite the fact that the duties and powers of the pre-investigation institute as a separate stage of the proceedings before the court are defined in the Criminal procedure code of the Republic of Uzbekistan, at this stage, the officials of the body conducting the pre-investigation investigation are responsible for checking applications, reports and other information about the crime. The possibility of using the sufficient and legal grounds collected during the pre-

¹ <https://lex.uz/docs/3328284>

² Шамсутдинова Р.К. К вопросу о статусе участников стадии возбуждения уголовного дела // Вестник Удмуртского университета. Серия «Экономика и право». 2014. №2. – С. 128.

investigation check as evidence in the inquiry and preliminary investigation stages of the proceedings before the court has not been established in the legislation.

If we analyze the problems and shortcomings in this case:

First of all, according to our current criminal procedure law, any real information determined by the inquirer, the investigator and the court in accordance with the procedure established by law is considered as evidence in a criminal case³. However, Article 81 of the Criminal procedure code does not include an official of the body conducting the pre-investigation investigation into the list of data-determining subjects. The fact that the officials of the body conducting the pre-investigation check are not included as authorized bodies in the determination of evidence in the manner prescribed by law is the basis for not recognizing the information determined during the pre-investigation check as evidence. In addition, during the pre-investigation check, the application, report and other information about the crime are checked, that is, at this stage, the criminal case is not initiated. In the above article of the Civil procedure code, only the information determined within the framework of the criminal case, i.e., the information determined by the inquirer, the investigator and the court after the initiation of the criminal case, is designated as evidence.

Secondly, according to the first part of Article 90 of the Criminal procedure code on the recording of evidence, it is stated that the information can be used as evidence only after it is recorded in the minutes of the investigative action or the minutes of the court session. However, in the second part of this article, only the inquiry, preliminary investigation stages of the proceedings before the court and formalization of the evidence through the records kept in the court are provided and it is not mentioned as the stage of the investigation before the investigation. This is also a reason to evaluate the information found during the pre-investigation check as a limiting factor in the possibility of using it as evidence.

Thirdly, in the article 95 of the Criminal procedure code on the evaluation of evidence, it is established that the evaluation of evidence is carried out within the framework of the initiated criminal case and is evaluated by the inquirer, investigator, prosecutor and the court. Also, according to the third part of the article 81, it is stated that the results of operational search activities can be recognized as evidence only if they are obtained in accordance with the requirements of the law and after they have been checked and evaluated in accordance with the norms of the Criminal procedure code.

When analyzing the experience of developed countries, including the Russian Federation, in relation to this situation, according to the amendments made to Article

³ <https://lex.uz/docs/111460>

144, Part 1.2 of the Criminal procedure code of the Russian Federation by the Federal Law of the Russian Federation No. 23-FL of 2013, the information obtained during the investigation of crime reports is evidence. It is stated that it can be used as evidence. Also, in this article, if after the initiation of a criminal case, the parties apply for an additional or repeated forensic examination, such requests must be granted.

In our opinion, taking into account the above, the information collected by the officials authorized to carry out the pre-investigation check into the Criminal procedure code of the Republic of Uzbekistan in the course of the pre-investigation check in accordance with the procedure established by law can be used as evidence at the inquiry and preliminary investigation stages of the criminal proceedings before the court, as well as at the court stage. It is desirable to introduce changes that make it possible to use.

Procedural scientist L.V. Golovko, in his discussions, focused on the institution of pre-investigation check, in this regard, he emphasized “the need to preserve the stage of initiation of a criminal case, to unify the forms of preliminary investigation by deformatizing the stage of pre-trial proceedings, as well as to carry out rapid search activities at this stage”⁴.

Also, a number of procedural scientists think that “the lawmaker’s way of expanding the list of investigative actions used to check the report of a crime should be accepted as a positive phenomenon that generally meets the needs of practice”.

In our opinion, based on the trends and needs in practice, it is normal to expand the scope of investigative actions during the pre-investigation check.

In particular, it is known that in accordance with the second part of the article 329 of the Criminal procedure code of the Republic of Uzbekistan, a list of investigative actions that must be carried out during the pre-investigation check is given, according to which only the detention of a person during the pre-investigation check, in accordance with the second part of the article 162 of the Criminal procedure code, personal investigative actions such as search and seizure, inspection of the scene of the incident, examination and appointment of an inspection may be carried out. It is forbidden to carry out other investigative actions during the pre-investigation check⁵.

However, in practice, when examining the application, report and other information about the crime related to the death of a person, the officials authorized to carry out the investigation from the situation to the investigation issue a decision on the appointment of a forensic medical examination to determine the reasons that

⁴ Л. В. Головкин Курс уголовного процесса / под ред. М., 2017. С. 181.

⁵ <https://lex.uz/docs/111460>

led to the death of the corpse. In this decision, it is indicated to take samples from the corpse and conduct appropriate examinations to determine the causes of its death. However, as we mentioned above, during the investigation before the investigation, only the investigative actions specified in the second part of the article 329 of the Criminal procedure code can be carried out. Taking samples for expert examination is indicated in the Criminal procedure code as a separate investigative action and the article 329 of the Criminal procedure code does not specify it as an irrevocable investigative action carried out during the pre-investigation investigation.

Also, in cases where there is a need to find the features or symptoms of a person's body that are important for work, special signs, information about his physical development, spots, scratched, bruised, blistered places if it is not necessary to conduct an examination for this or the way to use methods that do not require an examination. There are cases of witnessing investigative action when it is possible to determine the intoxication and other physiological state of a person, but this investigative action is not included in the article 329 of the Criminal procedure code as an investigative action that can be carried out during the pre-investigation investigation.

Based on the above circumstances, we also support the opinion of the authors who proposed to expand the list of investigative actions during the pre-investigation chase. We consider it appropriate to include it.

In addition, the article 320² of the Criminal procedure code does not fully explain the concept of pre-investigation check. This article only talks about the measures that should be taken during the pre-investigation check. In particular, in Article 320² of the Criminal procedure code, "The pre-investigation check includes the verification of applications, reports and other information related to crime, the measures to make a decision based on the result of their review, as well as the measures to strengthen and preserve traces of crime, objects and documents that may be important for the case".

The issue of ensuring the rights of individuals in the investigation process before the investigation is of particular importance due to its relevance. V.S.shchadrin, while commenting on the concept of pre-investigation, emphasizes that the status and efficiency of ensuring the rights and legal interests of individuals in the criminal proceedings depends to a large extent on the extent to which these rights are ensured in the process of proceedings before the court. Also, he believes that problematic situations related to non-provision or limitation of the rights and

freedoms of persons participating in criminal-procedural relations arise precisely during the proceedings before the court⁶.

D. M. Mirazov's opinion in this regard deserves attention. In his opinion, "Pre-investigation check is the primary stage of the criminal process, in which the application, report and other information about crimes are checked and the issue of whether or not to open a criminal case is decided. At this stage, the process of protecting the legal interests of citizens affected by a criminal act begins"⁷.

Based on the above points, in the concept of pre-investigation check, it is necessary to cover not only the investigative actions that should be carried out at this stage, but also the situations related to the state and effectiveness of ensuring the rights and legal interests of individuals. We think that:

"Pre-investigation check - is the initial stage of the proceedings before the court, which involves the examination of the application, report and other information about the crime by the competent authorities, the implementation of measures to collect and preserve the evidence relevant to the case in accordance with the law, and the appropriate decision on the result".

⁶ Щадрин В.С. Процессуальные гарантии прав личности в уголовном судопроизводстве: понятие и доктринальное толкование // Закон и время. – 2003. – №3. – С.110.

⁷ Миразов Д. М. Терговга кадар текширув ўтказиш асослари, тартиби ва хусусиятлари: Ўқув қўлланма. – Т.: Ўзбекистон Республикаси ИИВ Академияси, 2016. – 4 б.