

LEGAL CONSEQUENCES OF FAILURE TO COMPLY WITH PROCEDURAL FORMS AT THE PRE-INVESTIGATION STAGE OF CRIMINAL PROCESS IN UZBEKISTAN LEGISLATION

Kukonboyev Khislatjon Muxtorovich

*Independent researcher Higher School of Judges under the
Supreme of Judges the Republic of Uzbekistan*

Annotation: This article analyzes the material and procedural aspects of the concept and significance of procedural forms at the pre-investigation stage of the criminal process. The requirements for procedural forms during the pre-investigation stage and the legal consequences of their non-compliance are theoretically and practically explained on the basis of national legislative documents. At the same time, the opinions and considerations of theoretical scientists in this field are analyzed.

Keywords: criminal procedure, pre-investigation investigation, criminal-procedural form, judicial authority, court documents, investigative actions, investigator, procedural form during pre-investigation investigation.

Аннотация: В статье анализируются материальные и процессуальные аспекты понятия и значения процессуальных форм на стадии доследственной проверки уголовного процесса. На основе отечественного законодательства теоретически и практически обоснованы требования к процессуальным формам на стадии доследственной проверки и правовые последствия их несоблюдения. Анализируются мнения и соображения учёных-теоретиков в данной области.

Ключевые слова: уголовный процесс, доследственное расследование, уголовно-процессуальная форма, судебный орган, судебные документы, следственные действия, следователь, процессуальная форма на доследственном расследовании.

Аннотация: Мазкур мақолада жиноят процессининг дастлабки терговга қадар текширув босқичида процессуал шакллар тушунчаси ва аҳамияти моддий ва процессуал жиҳатлари таҳлил қилинган. Терговга қадар текширувни амалга оширишда процессуал шаклларга қўйилган талаблари ва уларга риоя этмасликнинг ҳуқуқий оқибатлари миллий қонунчилик ҳужжатлари асосида назарий ва амалий жиҳатдан ёритилган. Шу билан бирга, мазкур соҳага оид назарий ва амалий олимларнинг фикр ва мулоҳазалари таҳлил қилинган.

Калит сўзлар: жиноят процесси, терговга қадар текширув, жиноят-процессуал шакл, суд ҳокимияти, суд ҳужжатлари, тергов ҳаракатлари, суриштирувчи, терговга қадар текширув жараёнида процессуал шакл.

A necessary condition for building a legal state, a civil society, is the unconditional enforcement of laws. Uniform and unconditional enforcement of laws depends on the attitude of our jurists to their duties and sense of responsibility [1].

In criminal proceedings, social relations are carried out on the basis of the form established by law [2] and such relations are called criminal procedural forms. Criminal procedural form is a legally established procedure for conducting a preliminary investigation, judicial examination and resolving a criminal investigation, as well as certain rules for their implementation, including the consolidation of procedural actions and their results in the appropriate protocols. Thus, criminal procedural form is a concept that includes both the procedure of the criminal process as a whole and the requirements for carrying out this activity at individual stages, as well as in the process of producing specific procedural actions [3] the pre-trial stage of the case is one of the largest parts of the criminal process. Observance and compliance with procedural forms during the pre-trial stage of the case is one of the most important issues.

In turn, all criminal procedural actions can be divided into the inquiry, preliminary investigation and trial stages. The requirements for documents of investigative and other procedural actions are established in the Criminal Procedure Code, and the precise regulation of the importance and conditions of the procedural form ensures the formation of a single legal practice, legality and allows for compliance with the general rules for the preparation of procedural documents throughout Uzbekistan.

The forms of pre-trial proceedings include pre-investigation and criminal investigation. In turn, the investigation of a criminal case is carried out in the form of an inquiry and a preliminary investigation. These stages can be called related methods of criminal procedural activity or stages of pre-trial proceedings.

It is known that, according to the criminal procedural legislation, the proceedings before the court start from the moment of receipt of applications, messages and other information related to the crime. This also means that the investigation has started before the investigation.

Common aspects of the pretrial stage include:

- general goals in the fight against crime;
- uniform obligation to initiate a criminal case within the scope of one's authority when there are signs of a crime;
- implementation of activities on the basis of uniform criminal and criminal-procedural legislation;
- compliance with uniform procedural forms in the conduct of inspection, inquiry and investigative actions prior to the investigation, as well as the fact that the established facts have equal evidentiary value.

The initial stage of the form of conducting the case before the court is considered a pre-investigation examination, and the term pre-investigation examination includes the examination of applications, messages and other information related to the crime, measures to make a decision based on the result of their review, as well as measures to strengthen and preserve traces of crime, objects and documents that may be important for the case [4]. Pre-trial investigation is the initial stage of the criminal process and involves the verification of applications, reports, and other information about crimes and the decision to initiate or refuse to initiate criminal proceedings.

Also, this stage is the beginning stage of the process of protecting the legal interests of citizens who have suffered as a result of criminal acts.

Pre-investigation investigation is the legal basis for conducting investigative actions aimed at determining the presence or absence of a criminal offense based on the collected materials. It initially appeared as a criminal procedural institution and constitutes a set of procedural norms that determine the procedure for resolving the issue of initiating a criminal case [5]. Thus, a pre-

investigation investigation is a set of procedural actions that include the registration of a complaint, report, or other information about a crime, the performance of certain procedural actions in order to determine the legality and existence of grounds for initiating a criminal case, and the process of making an appropriate decision based on the information received or determined. Also, during the pre-investigation investigation, the issues of initiating a criminal case or refusing to initiate a criminal case are resolved, which is the importance of this stage. Because after the initiation of a criminal case, a person must be brought to justice as a suspect or accused, and this affects the life of that person.

As is known, procedural activities at the pre-investigation stage are carried out by officials (inquiry officer, investigator and prosecutor) established by the Criminal Procedure Code, and this process is conducted under established conditions and in special procedural forms. This stage of the criminal process ends with a specific procedural decision determining the direction of further actions based on the materials collected on the received application, report or complaint. The decision on the initiation of a criminal case serves to fulfill the general tasks of the preliminary investigation. The official of the body conducting the pre-investigation or operational search activities is also obliged to carry out the instructions of the investigator or inquiry officer on the conduct of individual procedural actions and operational search activities in the case being conducted, and to assist the investigator or inquiry officer in performing procedural actions.

The official of the body conducting the pre-investigation investigation, while carrying out the pre-investigation investigation, as well as while fulfilling the task of the investigator, the investigator, performs procedural actions and makes decisions in accordance with the provisions of the Criminal Procedure Code.

Before the investigation, the decisions of the official of the body conducting the investigation must be approved by the head of this body. The written instructions of the head are binding for the subordinate official, who has the right to complain about these instructions to the prosecutor without stopping their execution. Written instructions of the prosecutor are mandatory for the head of the body conducting the investigation and his official before the investigation. If they are dissatisfied with the prosecutor's instructions, they have the right to appeal to a higher prosecutor without stopping the execution of the instructions.

The essence of the pre-investigation stage is the procedural process associated with the adoption of a procedural decision by the prosecutor, investigator or inquiry body to initiate a criminal case upon identification of the elements (elements) of a crime [6].

Now let's dwell on the procedural actions that are carried out during the pre-investigation investigation.

Conducting a pre-investigation investigation is understood as the process of registering a complaint, report or other information about a crime, performing certain procedural actions in order to determine the legality and existence of grounds for initiating a criminal case, and making an appropriate decision based on the information received or determined[7].

The Criminal Procedure Code defines the procedure for reviewing criminal applications, reports and other information (investigation before investigation). Registration of criminal applications, reports and other information and in the case of the need to check the legality of the reason and sufficient grounds for immediately initiating a criminal case, it should be decided no later than ten days.

During this period, the following issues are resolved:

1) the legality of the reasons for initiating a criminal case and the presence of sufficient grounds;

- 2) whether the received applications, reports and other information are grounds for initiating a criminal case or not;
- 3) whether the reports and information about the committed crime, its features and facts are based on evidence;
- 4) to which article of the Criminal Code of the Republic of Uzbekistan the prepared or committed crime belongs;
- 5) whether there is a need to investigate the received applications, reports and other information, and if so, what investigative actions (actions) should be taken;
- 6) whether there are grounds for initiating a criminal case, refusing to initiate it, or referring the application (report) about the crime to the investigation as relevant;
- 7) determining the investigative actions to be taken in relation to the committed crime;
- 8) whether there are grounds for refusing to initiate criminal proceedings with the application of measures to be taken on reports of administrative, disciplinary and other violations;
- 9) what measures should be taken to prevent and stop the committed crime, and to consolidate and preserve traces of the crime.

The investigation of a criminal complaint, report, and other information by the body conducting the pre-investigation investigation must be carried out based on the cases assigned to their investigation by law, as well as the rules on the relevance of a criminal case to the investigation established in Articles 345 and 3812 of the Code of Criminal Procedure. In this case, complaints, reports, and other information that do not belong to the body conducting the pre-investigation investigation must be forwarded in accordance with their relevance in the established manner.

The above-mentioned period of pre-investigation investigation begins from the moment of receipt of applications, reports and other information about the crime and includes the time until the decision is made to initiate or refuse to initiate a case or until the pre-investigation investigation materials are sent to the prosecutor in accordance with Article 587 of the Code of Criminal Procedure [4].

In addition, the following procedural actions may be taken during the pre-investigation investigation:

- 1) requesting additional documents and explanations on criminal applications, reports and other information;
- 2) detaining a person;
- 3) personal search and seizure;
- 4) examining the scene of the incident;
- 5) conducting an examination;
- 6) ordering an investigation;
- 7) issuing instructions on conducting operational search measures.

For information: during the pre-investigation investigation, it is prohibited to carry out other investigative actions, except for the investigative actions specified in the second part of Article 329 of the Code of Criminal Procedure.

Carrying out investigative actions during the pre-investigation investigation is very important. Because during the pre-investigation investigation, the competent authorities decide whether to initiate or refuse to initiate a criminal case. Another important feature of investigative actions that can be carried out during the pre-investigation investigation is that they can be carried out both before and after the initiation of a criminal case.

The term of the pre-investigation investigation may be extended by the prosecutor for up to one month by a reasoned decision of the inquiry officer, investigator or official of the body conducting the pre-investigation investigation in the event of one of the following circumstances:

- if an examination, service inspection, audit or other investigation has been assigned, the conduct of which requires a long time;
- if it is necessary to demand explanations from persons who are in remote places or who refuse to appear upon summons;
- if new circumstances have been identified and it is impossible to make a decision without additional investigation.
- if the term established by the relevant article of the Special Part of the Criminal Code of the Republic of Uzbekistan for voluntary compensation for the material damage caused and (or) for the elimination of the consequences of the crime has not expired.

Since the pre-investigation investigation is the first stage of the criminal process, it is necessary to verify the existence of grounds for initiating proceedings, and this investigation must be carried out within the limits and norms established by law. Because the criminal procedural legislation clearly defines the legal grounds for conducting a pre-investigation investigation, and the issue of initiating a criminal case is resolved independently by the investigator or other authorized official, which is a manifestation of his procedural independence.

It is necessary to specify separately the inspection, inquiry and preliminary investigation before the investigation as forms of conducting the case before the court. Because pre-investigation investigation, inquiry and preliminary investigation are different forms of pre-trial proceedings with separate tasks and directions of work.

As mentioned above, during the pre-investigation investigation, along with a number of procedural actions, some investigative actions are also carried out and a number of procedural documents are drawn up. Accordingly, the pre-investigation investigation is a system of some investigative and procedural actions carried out before the initiation of a criminal case.

Thus, there are the following types of procedural form at the pre-investigation stage.

The first type is that limited investigative actions can be carried out at the pre-investigation stage, and in accordance with Part 2 of Article 329 of the CPC, at this stage, personal search and seizure, inspection of the scene of the incident, examination, and appointment of an investigation may be excluded from the investigative actions. It is prohibited to conduct other investigative actions during the pre-investigation stage. Thus, if at this stage other investigative actions are carried out than those specified above (for example, confrontation investigative actions, witnessing investigative actions, exhumation of a corpse, and other investigative actions), these circumstances are considered to be contrary to the requirements of criminal procedural legislation and lead to a violation of the criminal procedural form.

The second aspect is that the pre-investigation period is clearly defined in criminal procedural legislation. The total period is ten days. In exceptional cases, this period may be extended by the prosecutor up to one month by a reasoned decision of the inquiry officer, investigator or official of the body conducting the pre-investigation period. If this period is violated by an official of the body conducting the pre-investigation period, along with the violation of procedural deadlines, it will also lead to a violation of the procedural form. This will lead to the fact that the information collected in the case will be recognized as inadmissible evidence, and the decisions made in this case will be canceled.

Now, if we turn to the issue of serious violation of procedural law norms at the pre-investigation stage, as in every stage, violations of the procedural law norms at the pre-investigation stage also occur in the following cases.

Firstly, according to the law, the participation of a defense lawyer is mandatory in cases where the circumstances specified in Article 51 of the Criminal Procedure Code exist, and failure to comply with this requirement is considered a serious violation of the norms of criminal procedure law [8]. However, even at the stage of pre-investigation, the failure to provide the person involved in the pre-investigation with the right to defense is considered a violation of the criminal procedural form.

Secondly, there are circumstances that exclude participation in the case at the stage of pre-investigation, and if a pre-investigation investigation is carried out in this case, this in turn leads to a violation of the criminal procedural form. Therefore, Articles 76-79 of the Criminal Procedure Code establish the grounds for excluding participation in the case, that is, refusal.

Also, Article 80 of the Code of Criminal Procedure clearly states that in the event of the circumstances specified in Articles 76-79 of this Code, a judge, people's adviser, prosecutor, investigator, inquiry officer, secretary of the court session, representative of a public association or collective, defense attorney, representative of the victim, civil plaintiff or civil defendant, expert, specialist, translator, or impartial witness must recuse themselves.

Thirdly, if pre-investigation investigative actions are carried out by persons who do not have the right to carry them out, this is a violation of procedural form. If pre-investigation investigative actions are not carried out by an authorized entity, the evidence collected in the case is assessed as inadmissible evidence.

However, one of the conditions for the admissibility of evidence is that the evidence was obtained by the relevant entity, that is, by an official authorized to conduct the procedural action related to the receipt of the evidence. Also, evidence obtained as a result of the performance of a procedural action in a criminal case by a person who does not have the right to conduct the criminal case in question is considered inadmissible evidence [9].

Fourthly, failure to explain the rights and obligations to the persons involved in the investigation at the investigation stage before the investigation is a violation of the procedural form. According to the current criminal procedural legislation, all the participants in the process should be explained their rights and obligations.

In particular, Article 64 of the Code of Criminal Procedure establishes the obligation to explain the rights of the participants in the process and ensure the exercise of these rights, according to which the inquiry officer, investigator, prosecutor or judge must explain the rights granted to the suspect, accused, defendant, as well as the victim, civil plaintiff, civil defendant and their representatives and ensure the opportunities to exercise these rights. At the same time, the obligations imposed on the participants in the process and the consequences of their failure to fulfill them must be explained [10].

These circumstances show that compliance with procedural forms at the pre-investigation stage is considered the main provisions of criminal procedural norms, and failure to comply with them is a violation of procedural norms. At the same time, there are the following main problems associated with compliance with procedural forms at the pre-investigation stage:

Firstly, the clear legal status, rights and obligations of persons involved in the pre-investigation stage are not defined. This leads to a violation of the rights and legitimate interests of persons involved in the work at this stage.

However, the Concept for Improving the Criminal and Criminal Procedural Legislation of the Republic of Uzbekistan, approved by the Resolution of the President of the Republic of Uzbekistan No. PP-3723 dated May 14, 2018, provides for determining the procedural status of persons involved in the pre-investigation investigation process, as well as those detained before the initiation of a criminal case.

Secondly, although Article 330 of the Criminal Procedure Code provides for decisions to be made as a result of considering information on a crime, it does not establish a procedural deadline for sending the received criminal applications according to their relevance. This creates a problematic situation regarding the time from which the period for considering a criminal application begins. This situation often leads to violations of the period for considering applications received about committed or planned crimes.

At the same time, the procedure for informing persons who submitted criminal applications, reports, and other information about the decision made based on the results of considering criminal applications and reports has not been established.

In judicial and investigative practice, only the period recorded in the log of outgoing letters is taken into account when informing the applicant about the results of considering the application for a crime.

The criminal procedural legislation of a number of CIS member states, including the Russian Federation, Kazakhstan, and Belarus, clearly establishes deadlines for sending criminal reports and reports based on their relevance after considering them.

In particular, in accordance with the fourth part of Article 148 of the Criminal Procedure Code of the Russian Federation, it is established that a copy of the decision on refusal to initiate a criminal case must be sent to the applicant and the prosecutor within 24 hours.

The Criminal Procedure Code of the Republic of Kazakhstan also establishes a deadline for sending criminal applications and reports as a result of their consideration. In accordance with Part 3 of Article 186 of the Criminal Procedure Code, criminal applications and reports must be sent as appropriate within five days after their registration.

Accordingly, based on the results of the analysis, the following are proposed to improve the procedure for considering criminal applications and reports:

- to introduce into the criminal procedural legislation a rule that if a letter, application or other anonymous report about a crime contains information indicating the presence of signs of a crime, it can be investigated in accordance with the procedure provided for by law and may serve as a reason for initiating a criminal case;
- to forward the application or report to the investigation no later than twenty-four hours from the time of its receipt, based on its relevance;
- to introduce a procedure for sending a copy of the decision made as a result of considering criminal applications, reports and other information to the applicant (the person who provided the information) and the prosecutor within twenty-four hours.

The introduction of this procedure serves to ensure guarantees for the protection of the rights, freedoms and legitimate interests of a person in criminal proceedings and to make a legal, justified and fair decision on the case.

If we conclude based on the above, the first stage of the form of bringing the case to the court is the pre-investigation investigation, and the procedural actions that include the examination of applications, messages and other information related to the crime, making a decision on the result of their review, and measures to strengthen and preserve the traces of crime, objects and documents that may be important for the case, are considered the pre-investigation investigation. Also, the officials who carry out the investigation prior to the investigation should carry out

procedural actions in the order and conditions specified in the criminal procedural legislation and follow the procedural forms.

List of used literature:

1. Rustamboev M.H. Criminal Law (General part). Textbook for higher education institutions.- T.: TSIL publishing house. 2006.- p. 529.);
2. G.Z. Tulaganov, D.B. Bazarova, S.S. Uralova. Textbook on the subject of "Criminal procedural law". - Tashkent: Publishing House of the Tashkent State University of Law, 2021. - 325 p;
3. Lapaev, I. S. Obshchie polozheniya ugolovnoy protsessy: uchebnoye posobie / I. S. Lapaev, A. B. Aleynikova. – Penza: Izd-vo Penz. Mr. Un-ta, 2021 – 170 p;
4. Criminal Procedure Code of the Republic of Uzbekistan // Bulletin of the Supreme Council of the Republic of Uzbekistan, 1995, No. 2;
5. Inspection before investigation: Textbook // Tursunov B.R., Rustambaev M.Kh., Mirazov D.M., Fayziev Sh. F. - Tashkent: Complex Print, 2019. - 7 p;
6. Mirazov D. M. Fundamentals, procedure and features of conducting a pre-investigation inspection: Training manual. – T.: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, 2016. – 5 p;
7. Inspection before investigation: Textbook // Tursunov B.R., Rustambaev M.Kh., Mirazov D.M., Fayziev Sh. F. - Tashkent: Complex Print, 2019. - 70 p;
8. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 17 of December 19, 2003 “On judicial practice on the application of laws on ensuring the right of defense of suspects and accused persons”;
9. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated August 24, 2018 No. 24 “On certain issues of the application of the norms of criminal procedural law on the admissibility of evidence”;
10. Criminal Procedure Code of the Republic of Uzbekistan // Bulletin of the Supreme Council of the Republic of Uzbekistan, 1995, No. 2.