



The Prospects For Improvement Of The Institution Of Pre-Investigation

Murodov Bakhtiyorzhon Bakhodirovich

Associate Professor Doctor Of Law, Acting Professor Of The Department Of Criminal Procedural Law Of The Academy Of The Ministry Of Internal Affairs Of The Republic Of Uzbekistan

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ABSTRACT

The article provides an in-depth analysis of the bases that serve as a reason for the initial stage of pre-investigation, as well as proposals and recommendations for further improvement of the process are developed.

KEYWORDS

Pre-investigation, interrogation, investigation, law, constitution, initiation of criminal proceedings, refusal to initiate criminal proceedings, application, electronic document, anonymous message.

INTRODUCTION

The comprehensive program measures are being permanently implemented to ensure the rule of law, further reform in the judicial system and the priority areas of humanization of criminal proceedings in our country. The Strategy of Actions for the five priority areas of development of the Republic of Uzbekistan for 2017-2021 implies important tasks such as

providing reliable guarantees of performance, improving and liberalizing criminal and criminal procedural legislation, improving the efficiency and quality of justice, improving the procedural framework of criminal proceedings, reliable protection of the rights and freedoms of citizens in the activities of judicial and investigative organs.

This requires an in-depth critical study of the legislative norms governing the institution of pre-investigation in criminal proceedings and the practice of law enforcement in connection with the implementation of these priorities. Pre-trial proceedings forms are stipulated in the Article 320¹ of the Criminal-procedural code¹ of the Republic of Uzbekistan, which include pre-investigation, interrogation and preliminary investigation.

It is possible to examine applications on crime, reports and other information, make a decision on the result of their review, as well as take measures to strengthen and preserve criminal traces, objects and documents that may be relevant to the case at the pre-investigation stage.

Pre-investigation shall be carried out by the organs specified in the Article 39¹ of the CPC and by the interrogator, investigator or prosecutor in accordance with the rules established in the Chapter 41 (initiation of the criminal case) of this Code.

The pre-investigation process is seen as the initial stage of the criminal process, the onset of the criminal applications, messages and other information are received, to the decision to institute criminal proceedings, refuse to institute criminal proceedings or send the application or notice as appropriate to the investigation.

The reasons for initiating criminal proceedings under the Article 322 of the CPC, in turn, serve as a basis for initiating pre-investigation. These reasons contain the followings:

- 1) Applications of individuals;

- 2) Messages provided by enterprises, establishments, organizations and public associations and officials;
- 3) Mass media reports;
- 4) Pre-investigative identification of information and traces indicating the commission of a crime by the investigating authority, interrogator, investigator, prosecutor or the court itself;
- 5) Claim on the plea of guilty [1].

The most common reason for instituting criminal proceedings in the judicial practice is the applications of the individuals. However, what kind of document the application is and the requirements for it are not directly defined in the current CPC. However, the term application is defined as a request for assistance in the exercise of rights, freedoms and legitimate interests in the Law of the Republic of Uzbekistan “On appeals of the individuals and legal entities” (LRU-445) dated on September 11, 2017. The expression “complaint letter” is explained as the appeal stating claim for the restoration of violated rights, freedoms and protection of legitimate interests in the Article 3 of this law [2]. According to the Article 324 of the CPC, individuals` applications upon the crime may be written or oral, and the oral applications shall be mentioned in the statement. The following circumstances are also clarified in this law, including, the possibility of individuals` applications on crime in a written or oral form, the necessity of the written application should be signed by the complainant, the formalization of oral application should be recorded in the statement, and the reflection of the statement must contain information about the complainant, his place of residence

¹ Hereinafter is used as CPC (abbreviation).

and work, and personal documents, in case the complainant cannot present his/her document, measures should be taken to verify his / her identity in other ways, the applicant shall be warned that he / she will be prosecuted for knowingly giving false information about the crime and this shall be noted in the report and confirmed by his / her signature, then the report shall contain information about the crime on behalf of the complainant, if possible, literally, and the signatures of the authorized official who received the application.

Anonymous messages, including, unsigned, forged signatures or letters written on behalf of the fictitious person about the crime, cannot be grounds for instituting criminal proceedings pursuant to the Article 23 of the CPC. In case there are clear facts of serious or very serious crime an anonymous report must be checked by the investigative organ prior to the investigation although not explicitly stated in the CPC or other normative-legal regulations. If the fact of the existence of the crime is confirmed in the relevant case, then the pre-investigation organ's direct identification of the elements of the crime serves as a reason to initiate the criminal case [3].

The complainant must sign the application in accordance with the applicable CPC requirements. This requirement serves to enhance the responsibility of the citizen who report about the crime, as well as to obtain reliable information necessary for the initiation of the criminal case or other conclusion. It turns out that not paying enough attention to this requirement can lead to poor quality of pre-investigation documents. The above analysis permits us to conclude that anonymous message may not serve as a basis for initiating the criminal case, but may serve as

a basis for initiating a pre-investigation examination.

In this regard, it is vague that the current CPC does not stipulate the procedure for individuals to file a criminal complaint electronically. Because in our country, 2020 has been declared the "Year of Science, enlightenment and digital economy", and this procedure is used in other legal relations. Therefore, we propose to state the Article 324 of the Criminal-procedural code as follows in order to establish the unique form of electronic filing of criminal complaints and to ensure the pre-investigative examination:

"The individuals` applications on the crime can be in a written, oral or electronic form. The complainant must sign the written and electronic application.

The oral application shall be recorded in the statement. The protocol must contain information about the complainant, his place of residence and work, as well as personal documents. If the complainant fails to present the document, measures should be taken to verify his / her identity in other ways.

The complainant shall be warned that s/he will be prosecuted for knowingly giving false information about the crime, and this will be noted in the protocol and confirmed by her/his signature. The report shall then contain information on the circumstances of the crime on behalf of the complainant, as literally as possible. The complainant and the authorized official who received the application shall sign the protocol.

The individuals` electronic applications on the crime must be digitally signed and have the identification details of the electronic document".

The implementation of this procedure in the Criminal procedural code not only serves to increase confidence in the authorities and the effective provision of the right of citizens to appeal, but also enables that law enforcement agencies receive reliable information, receive applications from individuals as soon as possible, register crimes and reports in a timely and accurate manner.

For further expand the opportunities for individuals to apply electronically, to improve the process of timely registration of criminal complaints and grievances, it would also be expedient to create the “Unique interactive appeals window” of the Ministry of Internal Affairs that will be able to display the applications on crime. At the same time, it is necessary to ensure the inclusion of data in compliance with all the requirements of the written application directly in the CPC, to establish the warning clause under the Article 237 of the Criminal Code of the Republic of Uzbekistan, to upload the identity of citizens approval should be provided and all information contained in this program must be confirmed by electronic signature.

Moreover, it is expedient to include the following possibilities in this program; namely, applicant is given a special identification number (code) after receiving an application on the crime, by entering this number in the program, the applicant is aware of which organ and which authorized official is considering his application, what actions are taken and the mechanism of notification of the decision made at the end of the pre-investigative examination.

In our opinion, the introduction of this innovation in the judicial practice is enshrined in the norm of the Article 35 of the Constitution

of the Republic of Uzbekistan, which states: “Everyone shall have the right, both individually and collectively, to submit applications and proposals, and to lodge complaints with competent state bodies, institutions or public representatives. Applications, proposals and complaints shall be considered in the procedure and within the time-limit specified by law”. This norm assists to eliminate the practice of bureaucracy and indifference, to ensure the transparency and openness of judicial proceedings, to ensure the effective implementation of the requirements of the law, the timely registration and resolution of individuals and legal entities` applications on the crime, to eliminate the practice of bureaucracy and indifference in the consideration of appeals of individuals in the pre-trial stage, to ensure transparency and openness of judicial proceedings and to directly implement the priorities set out in the Resolution of the Republic of Uzbekistan dated on March 2, 2020 “On the State program for the implementation of the Strategy of Actions for the five priority areas of development of the Republic of Uzbekistan in 2017-2021 in the Year of development of Science, enlightenment and digital economy”.

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