The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
Published: October 28, 2020 | **Pages:** 102-117
Doi: https://doi.org/10.37547/tajpslc/Volume02Issue10-17

IMPACT FACTOR
2020: 5. 453

Legal And Procedural Status Of The Defender At The Pre-Investigation Stage

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ABSTRACT

This article reveals an in-depth analysis of the pre-trial investigation stage, the individuals involved, as well as the role of defender and the procedural status of defender in pre-investigation inspection actions, and addresses the challenges at this stage in law enforcement practice today. The author provides substantiated scientific proposals on the development of a mechanism for the exercise of the right to protection in the pre-trial investigation and the determination of the legal status of participants in the pre-trial investigation, including the legal status and procedural status of defender, as well as their rights.

KEYWORDS

Pre-investigation stage, pre-investigation stage participants, applicant, investigation of criminal report, person under investigation of criminal report, defender.

INTRODUCTION

According to Article 3201 of the Code of Criminal Procedure, the earliest stage of pre-trial proceedings is the pre-trial investigation stage. The pre-trial investigation shall include measures to examine criminal applications, reports and other information, to decide on the outcome of their consideration, as well as measures to strengthen and preserve traces of crime, objects and documents that may be relevant to the case. The basis for the initiation of a pre-investigation is the receipt by the law enforcement body of a criminal application,

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report and other information, and their authenticity and the presence of criminal elements are checked by pre-investigation investigative actions. At the same time, law enforcement agencies are required to determine whether the report is a crime on the basis of criminal prosecution. That is, at this stage, certain individuals will be prosecuted. As a result, the constitutional rights of these individuals are significantly restricted (first, the right to liberty and security of person). For example, the rights of a person are affected by the act of bringing a person to the inquiry authorities for questioning and detention. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988 also defines a "**Detained person**" as any person deprived of personal liberty except as a result of conviction for an offence [1].

Thus, there is a need to exercise the individual's right to protection.

Article 116 of the Constitution of the Republic of Uzbekistan guarantees the right to legal assistance shall be guaranteed at any stage of investigation and legal proceedings[2], article 5 of the Law of the Republic of Uzbekistan "On Advocacy" stipulates that a lawyer may participate in a criminal case as a defender for a suspect or accused at the stage of inquiry or preliminary investigation [3]. According to Article 3203 of the Criminal Procedure Code of the Republic of Uzbekistan, an inquiry or preliminary investigation is a stage of criminal investigation. Therefore, it can be said that **the norm determining and regulating the participation of the defender in the pre-trial investigation is not provided for in our current legislation.**

Although Article 49 of the CPC stipulates that a defender may be allowed to participate in a case at any stage of the criminal proceedings, and when a person is detained, his or her right to freedom of movement is restricted in practice, but in practice there are problems with enforcement. After all, the process of arresting and detaining a person also consists of several stages: 1) arrest of the person; 2) bring him to a law enforcement body; 3) legal registration of detention; 4) interrogation of the suspect; 5) inform the relevant places about the detention of a person; 6) to make a decision on the release of the detainee or his subsequent detention[4]. At these stages, in some cases, illegal actions are taken by law enforcement officers against a detainee.

In particular, according to the legislation on administrative liability, a person can also be detained for an administrative offense, and the lawyer is notified only if the detainee requests, otherwise not[5]. This situation in the legislation allows state bodies and officials responsible for criminal proceedings to illegally gather evidence in criminal proceedings and grossly violate a person's right to protection.

To be more precise, in practice, by bringing a person to law enforcement under the pretext of committing any administrative offense that could in many cases lead to the detention of a person, and in accordance with the requirements of applicable law only at the request of the detainee, a meeting of this person with a lawyer is provided, and if the person does not request it, the state bodies and officials responsible for the criminal case shall not be obliged to provide the person detained for committing an administrative offense with a lawyer. In this case, the involvement of the person in the case is checked not in terms of the offense that led to his detention, but in connection with another criminal case under the jurisdiction of this law enforcement agency, which is not documented anywhere. A detainee can sometimes remain in

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law enforcement for several days, which means that his or her right to freedom of movement is restricted. During this time, his right to defense is not guaranteed and he is not given the opportunity to meet with a lawyer. Instead, explanations are obtained from that person, and his or her involvement in the crime is investigated. Such cases, unfortunately, lead to the use of illegal methods in the investigation, including the use of torture against persons brought to law enforcement agencies[6]. I.A. Retyunskikh also states: "In the practice of inquiry and investigation bodies, it is necessary to detain a suspect in cases where there is no criminal case yet, and it is not possible, for example, when a person is arrested at the time of the crime, the fact of arrest is the first call about the crime. Serves as a reason to initiate criminal proceedings". According to the author, criminal-procedural detention consists of pre-trial detention at the stage of initiating a criminal case and detention within the framework of the preliminary investigation stage. There is also non-procedural detention (police detention), which is the actual (physical) restriction of the freedoms of a person suspected of committing a crime by police officers[7]. In addition to the views of I.A. Retyunskikh, we can say that in the literature there is a concept of "police arrest", which implies the actual (physical) restriction of personal freedom by police officers[7].

If we pay attention to the statistics, in our country, in particular, in 2017, 7, in 2018, 10, in 2019, 16, and on June 1, 2020, 3 cases of torture by law enforcement officers, that is, a crime under Article 235 of the Criminal Code (Coercion to giving testimony, that is mental or physical pressure on a suspect, accused, witness, victim, or examiner by threats, striking, beating, tormenting, causing of suffering, inflicting of trivial or medium bodily injury or other illegal acts committed by an inquiry officer, investigator, or prosecutor with the purpose to coerce to giving testimony) was registered, as a result of which the issue of liability of the perpetrators was resolved. In the last three years, 757 (2019-208, 2018-352, 2017-197) complaints and reports of torture, intimidation and other harassment by law enforcement officers were received, of which 33 (2019-16, 2018-10) , 2017-7), i.e. 4.4 percent were prosecuted[8]. It turns out that **the lack of legal strengthening of the procedural rights of the persons under investigation before the investigation, it "allows" law enforcement officers to take whatever action they want against these individuals based on "their own fantasies".** In order to prevent similar cases in judicial practice, to protect the rights and freedoms of the individual from the earliest stages of the criminal process, as well as to improve the judicial and investigative activities, on August 10, 2020, the President of the Republic of Uzbekistan adopted Decree No. PD-6041 "On measures to further strengthen the guarantees of protection of the rights and freedoms of the individual in judicial and investigative activities". This Decree provides for the receipt of applications, explanations or testimonies from suspects, accused or defendants by officers of law enforcement agencies with the written permission of the inquiry officer, investigator, prosecutor or judge in the criminal case and only in the presence of defense counsel. except cases); to calculate the period of detention of a person suspected of committing a crime from the moment of his actual arrest; to ensure that the person has a private meeting with a lawyer before the procedural actions related to the arrest of a person in practice or from the moment when the operative measure related to his arrest is completed in practice or the decision on his recognition as a suspect is announced to him; in cases involving persons suspected or accused of committing a very

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serious crime, as well as in the case of a person being detained or placed under house arrest, the defense counsel must be present. In cases where there are grounds to involve a person as a suspect or accused in a criminal case (except when an expert examination or inspection is required), he shall be interrogated as a witness, as well as any written or written statement from him until the procedural rights of the suspect or accused are explained. oral testimony was prohibited. It should be noted that this Decree, adopted by the President, is a logical continuation of the ongoing reforms to strengthen human rights guarantees, as well as a very relevant and timely legal document aimed at eliminating many problematic issues in judicial practice. The fact that this document stipulates the participation of a lawyer as a guarantee of the right to protection of persons against whom the pre-trial investigation is conducted serves as a legal basis for achieving the principle of dispute from the very beginning of the proceedings.

In fact, although this Decree provides for their right to protection and the right to legal assistance of a lawyer before the conduct of proceedings against a person arrested in practice or in connection with a crime, however, in this document, **the issue of ensuring the right to protection of persons who have attracted the attention of law enforcement officers in practice or without being caught in the act, ie suspects, remains open in the legislation. The analysis of the case-study practice shows that in the investigation of a criminal report, not only persons with a clear guilt, but also persons with whom certain circumstances are known to be involved, are involved. Therefore, it should be noted that the legislation should guarantee the right to protection of all persons involved in the investigation prior to the investigation.**

At the same time, at this stage, an important task facing the legislation is **to develop a mechanism for the exercise of the right to protection and to resolve the issue of the legal status of the participants in the pre-investigation investigation.**

This requires, first of all, **an analysis of the pre-investigation stage, the legal status of its participants and participants,** and in this regard, to make recommendations to the legislation. According to the current legislation, the pre-investigation stage consists of three stages, namely:

1) examination of criminal applications, reports and other information;
2) making a decision on the results of their consideration (one of the decisions to initiate a criminal case, to refuse to initiate a case or to send an application or message depending on its relevance to the investigation);
3) stages of consolidation and storage of criminal traces, objects and documents that may be significant for the case.

Criminal applications, notices and other information (hereinafter - criminal reports) must be registered and resolved immediately, if necessary, within ten days, if it is necessary to verify the legality and grounds for instituting criminal proceedings. This period shall include the time from the receipt of the notification of the crime and until the decision to initiate or refuse to institute proceedings or before the investigation materials are sent to the procurator before the investigation. During this time, a pre-investigation investigation was conducted, during which additional documents, explanations were requested, as well as procedural actions of detention, personal search and seizure, inspection of the scene, examination, appointment of an inspector, search operations, assignments on

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transfer can be given. It is prohibited to conduct other investigative actions during the pre-investigation action [9].

In exceptional cases, the period of 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.

The pre-investigation stage begins from the time the crime report is registered by law enforcement. The date recorded in the crime register is the time of commencement of the investigation prior to the investigation and shall be carried out for a maximum period of up to 30 days, as mentioned above.

In fact, the pre-investigation stage is a small investigation, i.e. the evidence gathered as a result of the pre-investigation efforts serves as a basis for declaring an indictment in a future criminal case. However, a person involved in a pre-investigation investigation is not considered to have procedural status. Because, from the point of view of the legislation, the investigation is carried out not on the basis of any person, but on the basis of the state of the crime report. That is, the presence of a crime and its symptoms are investigated. However, this does not mean that the official does not seek to identify the culprit. Perhaps all pre-trial investigative efforts will focus on identifying the culprit, as well as strengthening the evidence base that confirms the crime was committed. A suspect is summoned by law enforcement officers for a pre-trial investigation without a formal declaration of suspicion and has not yet been declared a suspect or accused (a witness is prosecuted, so the legal status of this person should not be confused with that of a witness).

Today, procedural scientists draw attention to the fact that the protection of the rights and legitimate interests of certain persons involved in criminal proceedings depends on the clear definition of their procedural status[10]. In the course of the pre-investigation investigation, a wide range of persons, including the applicant, the victim, the person under investigation, the accused, the specialist, the victim's representative, the interpreter, the impartial, any circumstances of the case under investigation, indicates that the person and others may participate[11]. However, none of them has the necessary and sufficient status to carry out procedural actions regulated by criminal procedure law. The above are the procedural status that individuals acquire after a criminal case is initiated.

In particular, there is no victim as a participant in the criminal proceedings at the pre-investigation stage. This means that its representative does not exist either. At this stage, from a legal point of view, only the applicant is available. However, we know that the applicant and the victim are not always the same person. The legal literature describes several types of applicants involved in criminal proceedings:

an applicant who has suffered damage as a result of criminal activity and who may be subsequently found to be a victim after a criminal case has been instituted;

an applicant who has not been harmed as a result of criminal activity[12].

N.S. Amelnikov proposes to describe the applicants in 3 groups:

1) applicants who have reported criminal offenses, ie persons who have reported a criminal event being prepared or persons who have applied for a crime committed, including persons who have pleaded guilty and are applying to this category;

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2) persons whose rights and legitimate interests have been violated as a result of criminal procedural actions and who have filed an application thereon;
3) an applicant who is not a participant in the criminal proceedings, but complains about the actions (inaction) and decision of the inquiry officer, investigator, prosecutor or court or the decision or procedural actions that affected his rights and legitimate interests) [13].

In our opinion, this group will also be able to include participants in criminal proceedings who have reported violations of their rights and legitimate interests in the conduct of proceedings and in making decisions.

Criminal procedure law does not refer to the applicant at all when it refers to participants in criminal proceedings.

There is also no mention of a witness at this stage of the criminal process, even though he or she actually exists, but legally he or she does not yet exist.

Therefore, today, in accordance with the requirements of law enforcement theory and practice, it is important to determine the legal status of the participants in the pre-investigation inspection. After all, the procedural order of carrying out pre-investigation investigative actions is directly related to the procedural status of individuals.

Despite the fact that the Code of Criminal Procedure contains Article 3202, which regulates the pre-investigation stage, and this article stipulates that the pre-investigation investigation shall be carried out in accordance with the rules set forth in Chapter 41 of this Code, Chapter 41 does not set out the legal and procedural status of the participants in the pre-investigation investigation, nor does it provide for their rights and legitimate interests. However, the greatest need for the protection of the constitutional rights of individuals to protection belongs to this stage. Therefore, Chapter 401 of the Criminal Procedure Code has been supplemented with Article 3204 of the new edition, which contains the persons (investigator, inquiry body, head of inquiry body or department, investigator, head of investigative body) who acted as participants in the pre-investigation investigation. it is also proposed to establish the legal and procedural status of the applicant, the victim, the person arrested in practice, the person who has any information about the crime, the person against whom the crime report is being investigated and the defense counsel, to determine their rights and legitimate interests. In this case, it is advisable to include a norm the participants of the investigation may give explanations or refuse to give explanations on the crime committed, provide evidence, give explanations in their native language or in a language they know, free use of interpreter services, protection by other methods and means not prohibited in the CPC. At the same time, it is necessary to strengthen in the legislation the norm that before the investigation the person against whom the investigation is carried out must know what is "suspected".

It should be noted that the initiation of a pre-investigation investigation against a specific person occurs in the following cases:

a) if the report on the crime directly mentions the person who, in the opinion of the applicant, is considered to be involved in the crime;
b) if it is indicated in the notification of the discovery of signs of a crime or in the decision of the prosecutor to send the relevant materials to the body of preliminary investigation to resolve the issue of criminal prosecution against a

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specific person who committed the crime;

c) if the person pleads guilty[14].

According to A. A. Davletov, the person under investigation feels he is suspected of committing a crime [15]. For example, if the crime was committed within a "community," that is, in addition to the perpetrator, there are a number of other individuals not involved in the crime, in which case law enforcement officers will be present at each scene to identify the perpetrator. examines the person's involvement in the work. When serious crimes are committed against a person, as a rule, attempts to take samples for examination, witnessing, investigation for the purpose of short explanations are made not only against the offender, but also against other persons who for one reason or another were noticed by investigators before the investigation.

At this point, it is appropriate to focus on the identity of the person being investigated in relation to the crime report. Under the person being investigated in connection with the crime, means a person whose personal rights and inviolability are restricted by taking measures of a compulsory nature in order to determine the existence of suspicion against him during preliminary investigative actions related to the crime (obtaining explanations, taking samples for examination, requesting documents and items for appointment and conduct of forensic examination, examination of the scene, documents, items, corpse, examination by examination of documents, inspection, documents, items , examination of the corpse).

Prosecution activities of persons conducting investigative actions (bodies conducting pre-investigation, inquiry officer, head of inquiry body or department, investigator, head of investigative body, prosecutor) shall be carried out from the moment of commencement of procedural actions from the point of view of criminal procedure legislation. This begs the legitimate question: from what date does a law enforcement official conducting a pre-investigation investigation have an obligation to allow that person to exercise his or her right to protection, and to what extent is the procedural right explained?

We have reason to believe that the right to defense of persons who do not have procedural status at the pre-investigation stage is currently limited in terms of the implementation of the principle of dispute and equality of arms in criminal proceedings. This is because the rights and legitimate interests of the participants in the pre-investigation investigation have not yet been ensured. In particular, the right of the participants in the pre-trial investigation to use the assistance of a lawyer has not yet been reflected in the criminal procedure legislation. In our opinion, the participation of a lawyer in the case should also be allowed from the moment the crime report is received and registered. K.Ishniyazov also puts forward the following opinion: "Upon receipt of a statement or report on a crime committed against a specific person, the inquiry officer, investigator, prosecutor and the court must invite a lawyer to participate in the pre-investigation investigation. The defense counsel who has received such an offer must go to work in order to fulfill his direct obligations to ensure the rights and legitimate interests of the suspect in the commission of a criminal act[16]".

Well-known lawyer S.V. Irgashev also expressed his opinion in this regard: "It is known that criminal prosecution is carried out by professional investigators with higher legal education. For this reason, a person facing criminal prosecution should use the legal

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assistance of a qualified lawyer to ensure the effective protection of their rights[17]".

The constitutional rights and freedoms of individuals, ie the right to liberty and security of person, the right to inviolability of the home, the right to freedom of movement, the right to freedom of movement, the right to freedom of movement, the right to freedom of movement, the right to freedom of movement; when summoned for the purpose of sampling, as well as at the time of the actual arrest and submission to law enforcement. According to A.P. Ryjakov, actions that affect the rights and freedoms of a person are actions or decisions that do not allow a person with these rights and freedoms to exercise all or any of these rights[18].

In this regard, it is appropriate to focus on the form in which a lawyer participates in pre-trial investigation.

According to Article 5 of Law of the Republic of Uzbekistan "On Advocacy", an attorney shall be involved in the stage of inquiry, preliminary investigation and in court on criminal cases in as defense counsel, representative of the victim, civil plaintiff, civil defendant, that is, this Law divides the form of participation of a lawyer in the pre-trial proceedings into two: defense counsel and representative.

However, from a criminal-procedural point of view, these concepts have different meanings. The concept of "defense" refers to one of the forms of participation of a lawyer in criminal proceedings, which includes the defense, which is a party to the principle of dispute. In acting in this form, the lawyer has the procedural status of a defense counsel and protects the rights and legitimate interests of the suspect, accused, defendant in the manner prescribed by law and has the authority to provide them with the necessary legal assistance. If we use this situation as a legal analogy, we will be able to analyze the participation of the defense counsel in the pre-investigation phase, both in the form of a defense counsel and a representative. Given that pre-trial investigative actions affect the rights and freedoms of persons against whom there is a need to exercise their right to protection, and that these persons are subject to criminal prosecution, it is advisable for a lawyer to act as a defense counsel for these persons. The lawyer may also act as the applicant's defense counsel (if the applicant pleads guilty and reports the crime), may also act as a representative of the applicant (when the law enforcement body receives a complaint about the crime from a person who witnessed the crime or when the application is filed by a relative of the person who suffered as a result of the crime).

In addition, the participation of a lawyer as a "representative" in criminal proceedings can also be exercised as a representative of the victim. Prior to this investigation, in addition to the participants in the investigation, witnesses to the crime are also entitled to the assistance of a lawyer if they have a request.

While defending the interests of a witness in a crime (after the initiation of a criminal case, he acquires the procedural status of a witness), the lawyer is neither a defense counsel nor a representative of that person. In this case, it performs another function, i.e. the position of a lawyer is to provide "legal assistance"[19]. The performance of this duty in respect of a witness is characterized by his lack of personal interest in the conduct of the criminal proceedings. Accordingly, the information provided by the witness is considered to be more objective than the information obtained from other participants in the criminal proceedings. Therefore, the rights and legitimate interests of the witness, including

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the right to access the assistance of a lawyer, must be ensured.

Based on the above, it can be said that a lawyer is required to be present from the beginning of the pre-investigation investigation. Inviting a lawyer to the pre-trial investigation is a priority for the person involved in the procedural and investigative actions, as it provides an opportunity to develop a defense position, tactics and methods in the period leading up to the initiation of criminal proceedings and reach a decent and lawful decision. This is because certain actions taken during the pre-investigation investigation, such as the explanations given during the investigation, may be used against the benefit of the person who gave the explanation in the future. Investigative bodies often conceal the true purpose of such actions from the person being questioned, in which case only a professional lawyer can pay attention to the nuances of the interrogation and determine the true nature of the summons. As a result, the person's condition is mitigated or the level of refusal to initiate criminal proceedings is maintained, as well as the person's time, money, health, nerves and reputation are preserved during criminal prosecution by law enforcement officers. Therefore, at this stage, it is expedient to include in the legislation a norm providing for the mandatory participation of a lawyer. On the contrary, the failure to ensure the protection of the person under investigation in relation to the crime leads to the recognition of all explanations given by this person, as well as the results of procedural actions in his presence as evidence obtained by illegal means[20]. Explanations given by the person under Pre- investigative actions to the investigation are, by their nature, indications of the person and can be used as evidence in conjunction with other evidence[21].

However, access to a lawyer in the investigation of a criminal report is also complicated by the lack of a mechanism for its implementation[22]. The main problem is the lack of a legal mechanism for inviting, appointing, ensuring the mandatory participation of a lawyer in the investigation of a criminal report and the waiver of a lawyer.

In practice, we can see that a lawyer will take certain actions even before initiating a criminal case, as there is no restriction on this by law. In accordance with the Law of the Republic of Uzbekistan "On guarantees of advocacy and social protection of advocates", a lawyer may advise legal entities and individuals seeking legal assistance on their rights and obligations. Also in accordance with Article 5 of the Law "On Advocacy", an attorney shall provide consultation and explanations on legal issues, oral and written information on legislation, draw up applications, complaints and other documents of a legal nature. However, the JPK does not have a norm on this. However, Article 51 of the CPC does not oblige the investigator to invite a lawyer, except in cases where a lawyer is required to participate in the case. Therefore, if the investigator does not explain to the person the right to invite a lawyer or does not create a real opportunity to exercise this right, the person being prosecuted may be left without the help of a qualified lawyer. As a result, a person's inability to receive qualified legal assistance in a timely manner will aggravate his or her future situation. Therefore, It is expedient to stipulate in Article 51 of the CPC that one of the conditions for the participation of a lawyer is to ensure the participation of a lawyer in the pre-investigation investigation in obtaining testimony of the person under investigation or in the investigation or proceedings.

It should be noted that according to Article 329 of the Criminal Procedure Code, during the pre-

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investigation investigation, a law enforcement officer requires additional documents, explanations, as well as detention, personal search and seizure, inspection of the scene, assignments may be given to conduct examinations, appoint inspections, conduct search operations.

It is known from practice that the documents obtained during the pre-investigation investigation are considered to be evidence of the person's guilt, although the defense has not yet been formed at this stage. It follows that the participation of a lawyer in the investigation is, first of all, the most reasonable and necessary condition for the elimination of abuses in the above-mentioned proceedings by officials of the inquiry and preliminary investigation bodies, and secondly, the illegality of instituting or denying a criminal case. and in the event that it is found to be unfounded, it is possible to appeal against that decision.

However, due to the lack of clear rules of procedure for investigative actions, it is worth noting that there are certain difficulties that affect the participation of a lawyer in these actions. In particular, in actions related to the investigation of criminal reports, such as obtaining explanations, the concept of the procedural status of the person does not exist in the legislation, and the procedure for obtaining explanations is not defined in the law. However, according to the CPC, the status of a suspect or accused person is applied only after a criminal case has been initiated.

This raises questions about the time allowed for a lawyer to participate in the investigation of a criminal report, including the scope of his or her rights and powers.

Current criminal procedure law stipulates that a defender may be allowed to participate in a case at any stage of the criminal proceedings, and from the moment a person's right to freedom of movement is restricted in practice. However, the timing of the defense counsel's admission to the case remains unclear, given that the individual's detention status may be exercised both during the pre-trial investigation and after the criminal case has been instituted. This requires clarification of the time of the person's detention and restriction of his freedom of movement in order to determine the time of the defense counsel's employment. This is because the arrest of a person is also important from the point of view that it may be grounds for instituting criminal proceedings in the future. So when is a person considered arrested?

According to V.V. Vandyshev, there are two types of detention: factual and criminal-procedural [23]. T.V.Valkova writes about it: "The law provides for the arrest of a suspect in two stages, that is, a legal detention, which is formalized in the form of a statement of factual detention and detention, which actually restricts the free movement of a person[24]". These views are not new to science[25], that is, these ideas were already reflected in science in 1999 by I.L. Petrukhin. At that time, I.L. Petrukhin proposed to call the arrest of a person - the actual arrest or detention as a criminal-procedural arrest. The author strongly criticizes the idea that tactical detention should be understood as administrative detention, not criminal procedure, and justifies his position on the grounds that administrative detention should not be used when there is information about a crime[26].

K.B. Kalinovsky proposes to differentiate between actual arrest and detention in terms of allowing the participation of the subjects who support them and the defense. According to him, the actual arrest is the time when the detainee is brought to the criminal prosecution (investigative body, investigator, prosecutor).

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Therefore, the arrest of a person by private individuals (witnesses, victim) is not considered an actual arrest. After all, individuals do not have to ensure the participation of a defender in this action. They may allow the detainee to be brought to the police by delay (or even unlawful deprivation of liberty). Only from the moment the detainee is handed over to the law enforcement agencies will it be possible to allow the defense counsel to participate in the case, and from that moment it will be expedient to consider the detainee as a detainee[27]. E.S. Berezina, on the other hand, categorically rejects this idea, stating that a person suspected of committing a crime should use the assistance of a lawyer from the moment of his actual arrest, regardless of who arrested him[28].

There are still various debates among procedural scholars on the issue of arrest. It is clear that a criminal case may be instituted by an authorized person within a long or short period of time between the apprehension of the person and his bringing to the prosecuting authority. This period of time is, in the words of I.L. Petrukhin, an "ownerless zone", which is not regulated by either administrative or criminal procedure law[26].

Article 407 of the Criminal Procedure Code of the USSR of 1959 contained a vague provision stating that "at the time of notification of the arrest of a suspect, the time of arrest of the suspect shall be considered" [29].

Z.Z.Zinatullin expressed his opinion on the recognition of the following circumstances as the beginning of the period of detention: 1) the time of the actual detention (in the sense of depriving a person of free movement); 2) the time of bringing the person to the body of inquiry or preliminary investigation; 3) from the time of drawing up the statement on detention; 4) from the moment of placement of the person in a special institution for detention [30].

Z.F. Kovriga, on the other hand, states that the arrest of a person begins from the time of the statement on his arrest: "It is this legal act that makes the suspect a participant in the process. The failure to draw up a detention order denies the existence of a criminal-procedural sense of the suspect and, accordingly, grounds for calculating the length of detention. However, these considerations do not solve the problem in essence, because the same question arises every time a detention report is drawn up: what time should be indicated in the detention report, the time to bring the person to the detainee's room or the decision to draw up a detention report?" [31]

In our opinion, the following views of G. Abdumajidov should be taken into account: "The time from the actual detention to the time of bringing a person to law enforcement can be quite long, so it is not fair that this period should not be included in the period of detention[32]". A. Sharafutdinov also noted that the time taken to detain a person on the street and bring him to the law enforcement agency, before the investigation with his participation and during the investigation, was neglected [33].

G.Z. Tulaganova noted that the arrest of a person begins from the moment of bringing the detainee to the police station and other law enforcement agencies, and suggested to fill in the words of the detainee in the criminal procedure legislation with the sentence of the actual detention of the person[29].

Adding to the opinion of G.Z. Tulaganova, we can say that a clear and understandable expression of each word in the legislation would serve to prevent various misunderstandings encountered in the practice of exercising this right.

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
Published: October 28, 2020 | **Pages:** 102-117
Doi: https://doi.org/10.37547/tajpslc/Volume02Issue10-17

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However, as noted above, from the point of view of the need for criminal procedure legislation to ensure the right to protection not only of detainees, but also of persons who have been detained without arrest, are suspected and summoned to law enforcement agencies and may subsequently appear under the status of suspects and accused; It is expedient that the participation of the defense counsel in the case be reflected in the legislation from the beginning of the pre-trial investigation.

It should also be noted that if the person against whom the pre-trial investigation is conducted is not financially able to pay for the services of a lawyer, he will be deprived of legal assistance. Thus, even if a person is entitled to legal assistance from a lawyer, he or she cannot exercise that right because he or she cannot pay for the services of a lawyer. Therefore, it should be noted that Article 49 of the Criminal Procedure Code allows a defense counsel to participate in the case from the beginning of the pre-trial investigation.

The criminal procedure legislation does not set a norm on the possibility of obtaining evidence, information during the investigation or in the course of the investigation, because at this stage the lawyer acts mainly as a legal adviser. Therefore, we can say that pre-investigation investigative actions are carried out only by "procedural monopolists", i.e. by inquiry and inquiry bodies, investigators and investigative bodies. As a result, at this stage of the criminal process, the principle of contention may or may not be realized in practice. This is one of the controversial aspects of the process. The lack of legal regulation of investigative actions raises many questions and criticisms from law enforcement, advocates and the scientific community studying the issue[6].

In addition, another noteworthy fact is that the criminal procedure law does not provide for any liability for refusal to give an explanation and intentionally giving a false explanation until the initiation of a criminal case. If the defense attorney receives an explanation, then even after the initiation of criminal proceedings for deliberately giving a false explanation, no liability is provided by law.

During the pre-investigation investigation, the person being interrogated shall be notified in accordance with Article 238 of the Criminal Code of the Republic of Uzbekistan. However, if we pay attention to the disposition of this article of the Criminal Code, it is wrong to give false testimony, that is, Perjured testimony, that is knowingly false testimony of a witness or victim or knowingly false opinion of a forensic examiner, as well as knowingly wrong translation/interpretation from one language into another in the course of inquiry, pretrial investigation or in court. It appears that this article does not provide for criminal liability for perjury during the pre-trial investigation. Thus, when a lawyer applies to a particular person for an explanation of the case file, that person has the right to refuse to give an explanation without any justification and without reference to any legal norm. This causes significant problems in the practice of advocacy.

In accordance with Article 6 of the Law of the Republic of Uzbekistan "On Advocacy" and Article 87 of the CPC, the defense attorney has the right to interview persons who are aware of the information related to the case and receive written explanations with their consent. Judging by the analysis of the phrase "relevant information" in this norm, a lawyer can exercise these rights only in the preliminary investigation or trial. In addition, given that the investigation of a criminal report is the responsibility of law enforcement agencies, the explanations obtained by the lawyer may

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not be included in the materials of the investigation before the investigation of the case. Therefore, the CPC is proposed to introduce a new rule that provides for the liability of a person for refusing to give an explanation and intentional misrepresentation when requesting an explanation by a lawyer, as well as the fact that the explanations received by the lawyer during the pre-trial investigation must be included in the pre-investigation materials. At the same time, in the event of a decision to refuse to institute criminal proceedings, the criminal procedure legislation provides for the right of the defense to review the materials of the investigation prior to the investigation.

Typically, an explanation from a person is obtained as soon as possible from the time the crime was committed, the report of the crime was received, or the person's involvement in the case was established (suspicion arose). Due to the lack of legislation regulating this situation, a law enforcement official is not given time to hire a lawyer. V.V. Nikolyuka and P.G. Marfitsina expressed their views on the case, emphasizing that the official of the body conducting the pre-investigation investigation of the criminal report should ensure the participation of a lawyer in obtaining an explanation. This provision is reflected in the Decree of the President of the Republic of Uzbekistan dated on August 10, 2020, No. PD-6041 "On measures to further strengthen the guarantees of protection of the rights and freedoms of the individual in judicial and investigative activities". However, as a requirement of the pre-trial phase of the case, the pre-trial investigation requires a written explanation of the right of defense to the participants in the process. This may be on an explanatory form, in a protocol for taking samples for witnessing or verification, or on a separate form in which the right to protection is explained to the person being investigated. This will prevent the violation of the right to protection. In addition, the procedure for the use of the results of the investigation as evidence by the investigating authorities in accordance with the norms of the CPC will be established, and the acceptability of the evidence and the possibility of using the results of operational search activities to prove it will be achieved.

In order to overcome the above-mentioned problems, we consider it necessary to do the following:

first, in the Criminal Procedure Code of the Republic of Uzbekistan to separate the phrase "detention of a person suspected of committing a crime" into the concepts of "brought" and "procedurally detained";

Second, to bring the pre-investigation phase itself into a clear procedural order. There is only one article in the CPC - Article 329, which provides for the procedure for consideration of criminal applications, messages and other information. However, since we believe that this article is not sufficient to cover the entire process of the pre-investigation phase, we need to strengthen the legal framework of the pre-investigation phase procedure by introducing new articles into the CPC;

Third, defining the status of persons involved in criminal investigations as “persons involved in pre-trial investigations” and defining the scope of these persons and strengthening their rights, in particular the right to defense and access to a lawyer, in the CPC;

Fourth, to establish in the CPC a norm that allows a defense counsel to participate in the proceedings from the beginning of the procedural actions affecting the rights and freedoms of the individual in the investigation of a criminal report. It is also necessary to hire a lawyer, to appoint him, to determine the

order of participation of a lawyer in case of insolvency, to determine the form of participation as a lawyer, defense attorney or lawyer, as well as in cases where the lawyer receives explanations from persons involved in the crime to establish the issue of criminal liability for intentional misrepresentation in the CPC;

Fifth, to find as unfounded evidence the evidence obtained by the bodies conducting the preliminary investigation of the criminal report without the right of defense.

In conclusion, the first step in ensuring the right to protection, which is a constitutional right in the pre-investigation phase, requires the legislature to take the next important step, the purpose of which is to address the issues raised in this article. To do this, first of all, it is important to determine not only the procedural status of the person against whom the pre-trial investigation is being conducted, but also the legal status of the defense attorney involved in the process.

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