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# Current Condition Of Formalizing Evidence In The Investigation Process Of The Republic Of Uzbekistan

**Sharof Asadovich Kulmatov**
**Associate Professor, Doctor Of Science In Law, Deputy Chief Of The Department Of Criminal Procedural Law Of The Academy Of The Ministry Of Internal Affairs Of The Republic Of Uzbekistan**

## ABSTRACT

This article develops proposals and recommendations for the elimination of problems in the conduct of procedural actions and the formalization of their results in the practice of authorized investigation officials.

## KEYWORDS

Investigative practice, pre-investigation, interrogation, preliminary investigation, procedural action, formalization.

## INTRODUCTION

Evidence is collected through procedural actions in the criminal proceedings. The collected evidence are formalized by the officials responsible for the criminal case in accordance with the rules set out in Chapter 9 of the current CPC. In case the authorized officials do not formalize the result of the procedural actions according to the law, or even if it is properly formalized in case the procedural actions are conducted against the law, the resulting evidence is also considered inappropriate [1]. Therefore, procedural actions and their proper formalization in accordance with the requirements of the law in the criminal process are important. There are cases that the authorized officials do not conduct procedural actions in accordance with the requirements of the law and incorrectly record their results in the current investigation practice. For example, the General Prosecutor

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Office of the Republic of Uzbekistan examines the materials of a criminal case initiated under the Article 266, part 3, line "a" of the Criminal Code of the Republic of Uzbekistan, the following has been identified, the regional prosecutor`s office relinquished control of a very complex and topical criminal case, and the supervising prosecutor did not give any instructions during the investigation despite the serious consequences of the incident. As a result, the investigation was unplanned, fragmented, one-sided and superficial, without collecting sufficient evidence to prove the guilt of the perpetrators, their guilt was resolved, while other guilty officials were allowed to escape legal prosecution [2].

In addition, the victim named J. stated in his letter of request that eyewitnesses named X. and X2. did not participated in the investigation of the scene and false information formalized in the inspection act.

The investigator was impartial in the investigation of the scene, and the criminal case has definitely been conducted one-sided, in fact, when the investigator identificates, there were eyewitnesses at the crime scene but they misrepresented their names in order not to be confused during the investigation and trial, in accordance with the results of the investigation by the General Prosecutor`s Office of the Republic of Uzbekistan.

Another example is in the criminal case initiated by the second part of the Article 169, lines "v" and "g" of the Criminal Code of the Republic of Uzbekistan,

Authorities brought the witness to the district department of internal affairs organs without any justification, beat him, tormented, tortured, and subjected him to cruel, inhuman, and degrading treatment in order to obtain a confession that he had committed robbery with the accused and others. In the course of the investigation, it was found that the investigative actions impeded the full, complete and impartial conduct of the criminal case and seriously damaged the rights and legally protected interests of citizens. All procedural documents issued in these proceedings were also found to be illegal [3].

Some victims of the crime are refusing forensic examination appointed for the bodily injury inflicted at the pre-investigation stage. An official conducting the pre-investigation examination has also issued an unreasonable decision to refuse to institute criminal proceedings, drawing up a statement of refusal in the case. Unluckily, the chiefs of the conducting organ of pre-investigation examination and the prosecutor also confirm this decision. However, Article 173 of the CPC stipulates the appointment and conduct of an expert examination of the case. How can it be determined whether there is a criminal element without determining the extent of the bodily injury? How do we determine the qualification of this crime? Can the act drawn up on the case be grounds for refusing to initiate criminal proceedings? Can the act be considered as evidence in this case? Of course, not. As the procedural action is conducted incorrectly, the registration also goes in the wrong direction.

However, this is inappropriate the stipulation of the Article 329 part 2, of the CPC, which states that "... it is possible to inspect the scene of an incident, conduct an expert examination, and appoint an inspection ... It is strictly forbidden to conduct other investigative actions during the pre-investigation examination.". In this case, what should be assessed as a result of the procedural formalization of what is presented and the documents, its evidentiary value?

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At the pre-investigation examination stage, the authorities firstly obtain explanatory letters from the persons concerned in the case. Are these explanatory letters future evidence in the case or not? If the testimony of the person (witness, victim) differs significantly from the testimony given in the initial explanatory letter and the testimony at the time of interrogation in the initial investigation, do we rely on the explanatory letter or is there an interrogation report or some other way? In both cases, though, individuals are warned in advance that there is a liability in practice for perjury. If a person is found to have given false testimony in an explanatory letter, is criminal liability arise or not? In our opinion, no. The reason is that, firstly, the person does not have any legal status, and secondly, it is necessary to pay attention to the circumstances in which the explanatory letter may have evidence [4].

If we look at the Article 87 of the current CPC, it states that evidence is collected through investigation and litigation. Nevertheless, the explanatory letter is not considered in this article. It is still controversial issue among the procedural scholars [5].

Why the witness or victim deceives, its core is analyzed and to be identified in the practice of investigative actions, cases such as the suspect, accused, or their close relatives may have intimidated the witness or victim, turned him/her over for the fee, the witness`s close relative may have worked under the accused, the witness may have committed a crime with the accused or specific facial memory specified our mentality [6].

Victims or witnesses of crime in the course of the investigation, suspected of committing a crime, have not yet received official procedural status during the interrogation and preliminary investigation for a number of reasons (death of the victim as a result of severe bodily injury, departure of the witness to work abroad, etc.) cannot participate. It is in these cases that how the evidence-based significance of explanatory letters is addressed is not sufficiently regulated in the CPC [7].

The next is the extent to which the procedural actions taken are formalized by the authorities. Namely, in some of the more than 200 criminal cases examined, the authorities did not properly formalize the results of procedural actions, the content of documents (protocols, decisions, surveys, explanatory letters, etc.) was not approached due to the specifics of the crimes (template), only the plot of the crime, the part of the decision was changed, as a result of which the logical sequence was violated, and the criminal legal description of some of the decisions made was not sufficiently covered. After all, shouldn`t the concluding part of the decision be based on the main part of the decision? In some documents, the information of the old sample (template) is left (the decision to engage as a defendant, etc.), the content of the statements is irrationally distorted, incomprehensible (examination of the scene, etc.), which is also there are too many grammatical errors [7].

According to the survey of the official chiefs of the internal affairs organs, respondents answered the question that "What are the problems with the formalization of evidence in the protocol?", reported to have problems such as inappropriate conduction with the requirements of the law to be in 36.8%, spelling and lexical errors to be in 22.4%, violation of written speech rules to be in18.4%, and misrepresentation of data content to be in 17.6 %.

In our viewpoint, it is expedient to put forward the following proposals to address the abovementioned problems:

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1. The authorized officials are to take measures to ensure the safety of the participants in the proceedings in order to prevent them from giving false testimony;
2. To establish the practice of strengthening the explanatory letters by the authorized officials through the protocol in order to increase the importance and value of the explanatory letters received from the persons involved in the case at the pre-investigation stage;
3. To take measures to ensure the mandatory examination of the victim to determine the degree of bodily injury at the pre-investigation stage (Article 173 of the CPC);
4. Regularly improve the skills of interrogators and investigators in the specifics of crimes, including tactics, methods and forensic psychology of crime investigation.

The following proposals have been developed to improve procedural actions and their formalization:

1. Digitization of the activities of investigative organs in order to ensure openness and transparency of investigative activities, rapid receipt of information necessary for the case and the exchange of electronic data, and most importantly, to facilitate the participants in the process;
2. To develop a mechanism for video recording of certain investigative and procedural actions and placement of the recorded video in a special electronic database in order to ensure the rights of participants in the proceedings and prevent violations;
3. To establish the practice of verifying the results of the investigation of the scene of the incident by video recording without the participation of eyewitnesses;
4. Filling the gap in the legislation related to improving the requirements and content of the procedural formalization of evidence;
5. To create instructions on the procedure for conducting criminal proceedings in electronic form.

Thus, the proposals for the solution and improvement of these problems accumulated in the practice of the investigation lay the foundation for the effective and high-quality conduct of criminal proceedings, further strengthening the guarantees of reliable protection of the rights and freedoms of participants, the truth of the case.

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