



Stages Of Legal Regulation Of Inquiry In The Republic Of Uzbekistan

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ABSTRACT

The article analyzes the notion of inquiry as a part of criminal procedure, preliminary investigation in particular. This analysis is carried out in the context of historical development of legal basis for criminal procedure and investigation. In the result, five stages of historical development of institute of inquiry are pointed out.

KEYWORDS

Criminal procedure, inquiry, preliminary investigation, inquiry bodies, militia, pre-investigation check.

INTRODUCTION

Before the conquest of Turkestan by Russia, feudal states of Kokand Khanate, Khiva Khanate and Bukhara Emirate existed on the territory of present-day Uzbekistan. There were no bodies of inquiry and preliminary investigation in these states at that time, therefore, no preliminary investigation of the crimes was carried out. Justice was administered on the basis of religious doctrine.[1]

After the conquest of Turkestan by Russia, there was still no preliminary investigation of crimes.

Later, the principles of Russian judicial charters of 1864 began to be introduced in Turkestan, as well as system of prosecutorial supervision and investigative bodies. Investigation was carried out in the form of inquiry and in the form of preliminary investigation. But, however, inquiry often replaced preliminary investigation, because the tsarist government, in order to protect its

interests, i.e. struggle against the activities of progressive elements, tried to use inquiry as an accelerated investigation instead of preliminary investigation. Officials of Turkestan security department of the Ministry of Internal Affairs and the gendarme-police department of cities were used in this process.[2]

After the October Revolution, Investigative and Legal Department, being the first body of preliminary investigation, was formed in order to preserve revolutionary order and fight counterrevolution.

Initial legal regulation of inquiry was included in Instruction of the NKVD and the People's Commissariat of Justice "On organization of the Soviet workers'-and-peasants' militia", adopted in 1918. Clause 27 of this instruction imposed the function of inquiry for criminal offenses on the Soviet militia, scope of activities of which in inquiry was outlined in paragraph 28 of the instruction. The competence of the militia was: conduct of searches and inquiries in criminal cases under the guidance and instructions of judges and investigation commissions. In the concluding part of paragraph 27, it was emphasized that when conducting an inquiry, police officers are guided by the relevant decrees of the Workers' and Peasants' Government.

Thus, militia was the first body to be given inquiry functions in the Soviet criminal process. Although the number of investigative actions carried out by militia was limited to only three (search, seizure and inspection), this already laid the principle on which the modern inquiry is built - conduct of urgent investigative actions by inquiry bodies.[3]

The day of the creation of militia in Turkestan is January 29, 1918, when the order of the Council of People's Commissars of Turkestan was adopted. Supervision over the production

of inquiry was entrusted to investigation commissions and people's investigators. They had the right to give instructions on investigation process and to return cases for additional investigation.

It should be noted that inquiry at local levels was not very effective. The crime detection rate did not exceed 50%, only some employees of the Criminal Investigation Department and the State Political Directorate (SPD) of the republic made inquiries at the proper level.

In the orders, circulars and instructions of the NKVD of the TASSR aimed at improving the quality of inquiry special attention was paid to the issue of tactics and methods of investigation of certain categories of crimes.

Activities of all bodies of preliminary investigation and inquiry were regulated by provisions that also contained rules for production of investigative actions. In addition, procedure for arrest, search and other actions affecting personal rights and freedoms of citizens was regulated by instructions of relevant authorities.

The first Criminal Procedure Code of the RSFSR, adopted in 1922 by the All-Russian Central Executive Committee, significantly expanded the number of bodies of inquiry. It defined the tasks of inquiry more clearly and increased the range of investigative actions that could be carried out by bodies of inquiry. Bodies of inquiry included: militia and criminal investigation bodies, SPD and tax bodies; food, sanitary, technical, trade and labor inspectorates. Inspectorates could conduct inquiries only in cases assigned to their jurisdiction by law.

The Criminal Procedure Code of the RSFSR (1922), which was in force on the territory of the Turkestan Autonomous Soviet Socialist Republic, distinguished cases when inquiry in a

preliminary investigation was optional or mandatory. In the cases of the first group, materials of inquiry fully replaced acts of preliminary investigation and served as a sufficient basis for consideration of a case in court on the merits (Article 107). In the cases of the second group, in which inquiry bodies have already carried out certain investigative actions (Article 111), the investigator, having recognized materials of inquiry to be complete and sufficiently investigated, had the right to confine and draft indictment without conducting a thorough preliminary investigation.

The new edition of the Code of Criminal Procedure of the RSFSR was put into effect on February 15, 1923, in the same year its effect was extended to the territory of the Turkestan ASSR.

The boundaries between inquiry and investigation established by the Criminal Procedure Codes of 1922 and 1923 almost blurred already in 1924, after the 5th All-Russian Congress of Soviet Justice Workers. The congress considered it necessary to bring inquiry and investigation closer significantly, proceeding from the fact that "the difference between them lies in the complexity of the objects of investigation, which are the subject of their competence." Therefore, differences between them were reduced, in essence, to functional delimitation.

On June 16, 1926, the Presidium of the Central Executive Committee of the Uzbek SSR approved the first Criminal Procedure Code and put it into effect on July 1, 1926.

Chapter 8 of this Code was devoted to inquiry bodies and began with a listing of the bodies of inquiry, which were: militia and criminal investigation bodies, SPD and tax bodies, sanitary, technical, trade inspection and labor inspectorates in cases referred to their

jurisdiction; government agencies and officials in cases of illegal actions of their subordinates.

In accordance with Article 97 of the Criminal Procedure Code of the Uzbek SSR (1926), bodies of inquiry for crimes for which the preliminary investigation was mandatory, had the right to interrogate witnesses and suspect, seize, search, examine, as well as detain the suspect in committing crimes even before investigator entered the case.

Inquiry body was obliged to inform investigator, prosecutor about detention of the suspect, and the court about the cases under its jurisdiction within 24 hours.

The term for production of inquiry was set at no more than one month (Article 103 of the CPC). Extension of this period by anyone was not envisaged.

On June 29, 1929, a new criminal procedure code of the Uzbek SSR was adopted and put into effect on August 1 of the same year.

As rightly pointed out by G.A. Abdumazhidov, desire to make the law simple and easily accessible to workers actually led to abandonment of many achievements of procedural science, exclusion of a number of norms fully justified in practice. The former CPC had many shortcomings, but the 1929 CPC did not eliminate, but increased them.[4]

Article 4 of this Code of Criminal Procedure of the Uzbek SSR stated: "Preliminary investigation is carried out by investigators, militia, criminal investigation department, bodies of the united SPD, special inspections for their conduct and other authorities, which are granted the right to conduct investigation by special laws."

It should be noted that rights of the listed inquiry bodies to initiate a criminal case were to some extent limited. Because criminal case

was considered initiated only when a copy of this resolution to initiate a criminal case was sent to the supervising prosecutor and his consent was gained.[5]

In cases within the jurisdiction of investigator, militia and criminal investigation authorities could initiate the investigation and upon completion of the necessary investigative actions, the body that started proceedings had to transfer the case to investigator without waiting for his order. After the transfer of the case, these bodies had the right to carry out certain investigative actions only on behalf of the investigator.

Thus, by the end of the 1920s, border between inquiry and preliminary investigation began to blur, as investigators and prosecutors began to widely use the right granted to them to transfer criminal cases. It took many years to realize that this path was wrong.[6]

According to the all-union laws adopted in 1934-1936, state security bodies obtained the right to conduct preliminary investigation for cases state crimes and crimes against the order of administration, fire protection bodies - for cases of fire regulation violations, bodies of the state automobile inspection - for cases of violations of traffic rules in vehicles, car accidents, misuse and criminally mismanagement of transport, violations of discipline in vehicles.

There were no clear procedural boundaries between inquiry and preliminary investigation until the mid-50s. These clear boundaries between them appeared after the adoption of such acts as the Regulation on Prosecutor's Supervision in the USSR dated from May 24, 1955, Fundamentals of Criminal Justice of the USSR and the Union Republics dated from December 25, 1958. Likewise, after adoption of the Fundamentals of Criminal Procedure of the USSR and the Union Republics, on May 21,

1959, the Criminal Procedure Code of the Uzbek SSR was approved and came into force on January 1, 1960.

The Fundamentals consolidated two forms of preliminary investigation of criminal cases: inquiry and preliminary investigation, and gave an exhaustive list of preliminary investigation bodies.

According to Article 28 of the Fundamentals and Article 97 of the Code of Criminal Procedure of the Uzbek SSR, the bodies of inquiry were assigned as follows:

1. militia;
2. commanders of military units, formations and chiefs of military institutions - in cases of all crimes committed by subordinates or military personnel, as well as those liable for military service during service or training camps, as well as in cases of crimes committed by non-military personnel working in military institutions and military units, or at the disposal of an institution or unit;
3. heads of penitentiaries - in cases of crimes committed at the location of the correctional labor institution;
4. bodies of state fire supervision - in cases of fires and violations of fire regulations;
5. border guard authorities - in cases of violations of the state border;
6. bodies of the State Security Committee - in cases in which they are conducting a preliminary investigation.

From the foregoing, it is clear that the list of bodies of inquiry does not include sanitary, technical, trade inspections, etc., since the legislators decided to deprive these institutions' the right to conduct inquiry.

Until September 6, 2017, in accordance with Article 339 of the Code of Criminal Procedure of the Republic of Uzbekistan, inquiry was production of urgent investigative actions, and Article 38 established the following exhaustive list of bodies of inquiry at that time:

- 1) militia;
- 2) commanders of military units, formations, heads of military institutions and educational institutions - in cases of crimes committed by military personnel subordinate to them, as well as those liable for military service during their training; in cases of crimes committed by employees of the Armed Forces of the Republic of Uzbekistan in connection with the performance of official duties or in the location of a unit, formation, institution or educational institution;
- 3) bodies of the national security service - in cases attributed by law to their jurisdiction;
- 4) heads of management bodies of punishment execution system of the Ministry of Internal Affairs of the Republic of Uzbekistan, heads of punishment executing institutions, penal colonies, educational colonies, pre-trial detention centers and prisons - in cases of crimes against the established order of service committed by employees of these institutions , as well as in cases of other crimes committed at the location of these institutions;
- 5) bodies of state fire supervision - in cases of fires and violations of fire regulations;
- 6) border guard bodies - in cases of violations of the state border;
- 7) captains of sea-going vessels;
- 8) bodies of the state tax and customs service - respectively in cases of violations of tax and customs legislation.

The list of inquiry bodies was modified several times and at the time of reforming, inquiry and the formation of bodies carrying out pre-investigation checks looked as follows:

- 1) militia;
- 2) commanders of military units, formations, heads of military institutions and educational institutions - in cases of crimes committed by military personnel subordinate to them, as well as those liable for military service during their training; in cases of crimes committed by employees of the Armed Forces of the Republic of Uzbekistan in connection with the performance of official duties or in the location of a unit, formation, institution or educational institution;
- 3) bodies of the national security service - in cases attributed by law to their jurisdiction;
- 4) heads of the bodies of management of the system of execution of punishment of the Ministry of Internal Affairs of the Republic of Uzbekistan, heads of institutions executing punishment in the form of arrest, penal colonies, educational colonies, pre-trial detention centers and prisons - in cases of crimes against established procedure for carrying out service committed by employees of these institutions , as well as in cases of other crimes committed at the location of these institutions;
- 5) bodies of state fire supervision - in cases of fires and violations of fire regulations;
- 6) border guard bodies - in cases of violations of the state border;
- 7) captains of sea-going vessels;
- 8) bodies of the state customs service, the Department for Combating Tax and Currency Crimes under the General Prosecutor's Office of the Republic of Uzbekistan and its subdivisions in the

field - respectively in cases of violations of customs, tax and currency legislation;

- 9) Department for the execution of court decisions, material, technical and financial support of the activities of the courts under the Ministry of Justice of the Republic of Uzbekistan and its territorial departments - in cases related to the evasion of keeping minors or disabled persons, parents, failure to comply with a judicial act, as well as illegal disposal of arrested property.
- 10) The main directorate for control over activities of markets and shopping complexes of the State Tax Committee of the Republic of Uzbekistan and its territorial departments - on cases of violations in the financial, economic and tax spheres identified in the territories of markets, shopping complexes and adjacent places of temporary storage of vehicles.

According to the current Criminal Procedure Code after reforming inquiry and defining of the list of bodies carrying out pre-investigation check, as well as based on the tasks and powers of pre-investigation check bodies, it becomes clear that such tasks as taking the necessary measures, including using scientific and technical means, in order to detect signs of a crime and committers, identifying data that can be used as evidence in a criminal case after verification in accordance with the rules of the Criminal Procedure Code, and some of these bodies for this purpose have the right to conduct operational-search measures that previously assigned to the bodies of inquiry are now assigned to the bodies carrying out pre-investigation checks.

Currently, bodies carrying out pre-investigation check in accordance with Article 391 of the CCP are as follows:

- 1) internal affairs bodies;
- 2) commanders of military units, formations, heads of military institutions and educational institutions - in cases of crimes committed by military personnel subordinate to them, as well as those liable for military service during their training; in cases of crimes committed by employees of the Armed Forces of the Republic of Uzbekistan in connection with the performance of official duties or in the location of a unit, formation, institution or educational institution;
- 3) bodies of the national security service - in cases attributed by law to their jurisdiction;
- 4) heads of the bodies of management of the system of execution of punishment of the Ministry of Internal Affairs of the Republic of Uzbekistan, heads of penal colonies, educational colonies, pre-trial detention centers and prisons - in cases of crimes against the established order of service committed by employees of these institutions, as well as in cases of other crimes committed at the location of these institutions;
- 5) bodies of state fire supervision - in cases of fires and violations of fire regulations;
- 6) border guard bodies - in cases of violations of the state border;
- 7) captains of sea-going vessels;
- 8) bodies of the state customs service - in cases of violations of customs legislation;
- 9) Department for combating tax, currency crimes and legalization of criminal incomes under the General Prosecutor's Office of the Republic of Uzbekistan and its local units - on cases of violations of tax and currency legislation;
- 10) Bureau of compulsory enforcement under the General Prosecutor's Office of the Republic of Uzbekistan and its local subdivisions - in cases involving evasion of

keeping minors or disabled persons, parents, failure to comply with a judicial act, illegal disposal of arrested property, as well as related to violation of the rules for using electric, thermal energy, gas, water supply;

- 11) Main directorate for prevention of offenses in the sphere of retail trade and provision of services of the State Tax Committee of the Republic of Uzbekistan and its territorial departments - on cases of offenses in financial, economic and tax spheres identified in the territories of markets, shopping malls and adjacent places of temporary storage of motor vehicles.

As can be seen from the above list, bodies exercising pre-investigation check are actually former inquiry bodies.

Current CPC does not have an article providing for a separate list of inquiry bodies. But at the same time, Article 38 of the Criminal Procedure Code provides for production of inquiries by investigators of certain state bodies, such as internal affairs bodies; Department for combating economic crimes under the General Prosecutor's Office of the Republic of Uzbekistan and its local units; Bureau of compulsory enforcement under the General Prosecutor's Office of the Republic of Uzbekistan and its local units; State Customs Committee of the Republic of Uzbekistan and its local subdivisions; National Guard of the Republic of Uzbekistan and its local units.

Thus, based on the analysis carried out, the following stages of emergence and formation of inquiry bodies in the criminal process of the Republic of Uzbekistan can be distinguished:

The first stage - emergence of the bodies of inquiry in the period before the October Revolution (1917);

The second stage - emergence and development of the bodies of inquiry after the October Revolution (1918 - 1958 yy.).

The third stage - development of bodies of inquiry in the period before the introduction of the Criminal Procedure Code of the Republic of Uzbekistan (April 1, 1995);

The fourth stage - the period of development of the bodies of inquiry prior to reforming inquiry (from April 1, 1995 to September 6, 2017);

The fifth stage - the stage of the reformed inquiry and the formation of pre-investigation inspection bodies (from September 6, 2017.)

Thus, the history of development of the institution of inquiry in the criminal process convinces us that existence of inquiry and preliminary investigation is fully justified. It is inadmissible to replace preliminary investigation with an inquiry. Instead of interrogation as the initial procedural form of investigation, which was called upon to carry out urgent investigative actions in order to disclose, prevent and suppress crimes, the legislator introduced the institution of pre-investigation check as one of the forms of pre-trial proceedings, which became the legal successor of the tasks previously assigned to inquiry bodies.

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