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Research Article

PROBLEMS OF THE PERMISSIBILITY OF EVIDENCE OBTAINED DURING THE PRODUCTION OF INVESTIGATIVE AND OTHER PROCEDURAL ACTIONS DURING THE PRE - INVESTIGATION CONTROL

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ABSTRACT

This article analyzes the types of investigative and other procedural actions, the conduction of which is enshrined in the criminal procedural law, as well as procedural actions that are reflected in other legislative acts, or are not regulated in any way, however, nevertheless, in practice they are widely used, for which, legal regulation needed. A comparative analysis and comparison with the norms of the legislation of the Russian Federation regulating the procedure for conducting a pre-investigation check was carried out, as well as investigative and procedural actions allowed at this stage were studied, as well as issues of ensuring the protection of the rights and freedoms of persons involved in a pre-investigation check were considered. Taking into consideration the results of the study of the types of investigative and procedural actions available in practice, a number of conditions have been put forward under which the results of the investigative and procedural actions carried out will meet the requirements of the admissibility of evidence or may be subject to doubts about admissibility.

KEYWORDS

Preliminary inquiry, investigative and prosecutorial activities, a request for discovery, examination of the crime scene, auditing, survey, explanation, report, admissibility of evidence.

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INTRODUCTION

The problem of the admissibility of evidence obtained during investigative and procedural actions is currently being widely discussed in scientific circles and among practical participants of the Republic of Uzbekistan in accordance with the Law LRU - 442 of 06.09. 2017 year. [1]

While writing this article, such methods were used as a historical one with an appeal to the origins of procedural rules in the past, a systematic approach associated with substantiating the relationship of legal norms of various branches of law, a comparative logical approach, expressed in comparing the legal provisions of different countries regarding the same event, and also, by means of analysis, the mental decomposition of the content of various concepts into constituent elements was carried out.

It should be noted that the main reason for discussion and discussion is the incompleteness of the legal regulation of the stage of pre-investigation verification. In particular, the limited rights of citizens in the implementation of pre-investigation verification, the procedural complexity of using the data obtained at this stage as evidence, the ambiguity in the interpretation of the use of materials of operational-search activity and the elimination of these gaps is a prerequisite for the effective implementation of the tasks stipulated by the criminal procedure legislation. All of the above affects the definition of the requirements for evidence, in particular for such a property as its admissibility.

According to K.I.Sutyagin, the institution of admissibility of evidence is a serious obstacle to illegal behavior of law enforcement officers, abuse on their part, negligent and negligent attitude to the norms of the law during the collection of evidence [2, p.28].

Developing this idea, it is appropriate to quote the words of P.A. Lupinskaya that "in conditions when the fairness of justice presupposes a system of guarantees to protect human rights from unfounded accusations and convictions, prohibits any form of violence against a person to obtain his testimony, protects the suspect, the accused from testifying against himself, provides a number of persons with witness immunity, the rules on the admissibility of evidence acquire special significance as a guarantee of human and civil rights and freedoms and justice "[3, p.8].

If to define the tasks of the pre-investigation check, then they are, in accordance with Art. 3202 of the Code of Criminal Procedure [4] are reduced to carrying out measures to verify statements, messages and other information about crimes and making decisions on them, taking actions to consolidate and preserve traces of crimes, objects and documents that are significant for the case.

L.A. Tatarov rightly notes that "Collecting, checking and evaluating evidence without a specific goal is meaningless, since it cannot be an end in itself in the process and a kind of self-sufficient "thing in itself". Justification and verification of specific conclusions and decisions in a criminal case by the totality of evidence obtained, verified and evaluated in accordance with the procedure established by law - this is what unites two aspects of proof into one whole, gives meaning and meaning to its elements, ... in order to implement the purpose of criminal proceedings "[5, p. 17.]

Currently, the criminal procedural law provides for a limited list of investigative and other procedural actions permitted at the stage of pre-investigation verification, the purpose of which is to determine the

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presence of signs of any crime in the event under investigation and to protect non-criminal offenses from those that have criminal nature. Some of the actions performed during the pre-investigation check are investigative (inspection of the scene of the incident, objects, documents, corpses, the appointment and production of an examination, as well as revisions), the second are verification or procedural (obtaining explanations, submitting documents and items, conducting audits and official checks, conducting operational-search activities). Although the CPC does not provide for a list and description of the concept of "other procedural actions", based on current practice, it is advisable to include under this concept the procedural registration carried out outside the framework of any investigative actions.

According to T.S. Simonova "to establish the presence or absence of grounds for initiating a criminal case, it is necessary to carry out verification activities. The factual data, on the basis of which a conclusion is made about the presence or absence of grounds for initiating a criminal case, can be obtained only from procedural sources" [6, p. 17].

However, the procedure for the production of procedural actions is not fixed in all cases, as a result of which, in investigative and judicial practice, there is no unified approach to documenting individual procedural actions and using the data obtained as evidence in a criminal case.

The course of investigative and other procedural actions, usually, are recorded in procedural acts called protocols (from the Greek. Protokollon-the first sheet of the manuscript). Protocols are a kind of written documents (from Lat. Dokumentum - sample, certificate, proof); they, in turn, are material objects in which information about any facts is recorded with the help of signs, symbols and other elements of natural and artificial language. [7, p.61]

The Criminal Procedure Law provides for the necessary requirements, legally significant details for the protocols, but does not limit the way the protocols are drawn up, both handwritten and protocols drawn up with the help of technical means are acceptable. At the stage of pre-investigation verification, it is often possible to observe the presence of mixed methods of formalizing the protocols. So, the forms of the protocols can be prepared in advance by law enforcement officials, in particular those involved in emergency trips as part of operational investigative groups, for their subsequent execution or filling out by hand, in the event of a necessary emergency situation.

It should be noted that the RF Code of Criminal Procedure does not provide for a separate term as "pre-investigation check", however, similar tasks are performed at the stage of initiating a criminal case. PA Lupinskaya, analyzing evidence at the stage of initiation of a criminal case in the Russian Federation, emphasized: "Since proving in a criminal process involves the production of investigative actions to collect and verify evidence, one should come to the conclusion that criminal procedural proof does not take place at this stage ... This conclusion is not shaken by the cases indicated in the law when certain investigative actions can be carried out at this stage of the process. " At the same time, the data obtained at the stage of initiating a criminal case, in her opinion, could be used "for subsequent proof. Statements and letters of citizens, messages from institutions, enterprises, ... acts of audits, accounting documents received before the initiation of a criminal case can be used as written documents or material evidence, provided they are properly checked by an investigative means (for example, the interrogation of the person

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who made the statement or submitted materials etc.) "[8, 145].

In this case, proceeding only from the limitations in the conduct of investigative actions, it was denied the possibility of recognizing the value of full-fledged evidence for the materials of the pre-investigation check, giving them the status of only intermediate or preliminary evidence. The independent evidentiary value behind the information contained in these materials, without their verification in the course of the subsequent preliminary investigation, was not recognized, which, of course, does not correspond to the objectives and purpose of this stage.

In addition to the limited procedural possibilities, another problematic point is the establishment of the reliability of the information contained in the materials of the pre-investigation check. It is not always possible to check the reliability of information about a crime, since the reliability depends on the presence of any set of information about the facts, i.e. sufficiency, which is the main deficit at the stage of pre-investigation verification. This explains the fact that the decision to initiate a criminal case can be based on a minimum sufficient number of facts. Although, the most preferable option is the one in which the totality of the collected evidence unambiguously excludes the erroneousness of the decision.

The evidence collected during the pre-investigation check is still limited, probable, and this often leads to the fact that at the end of this stage of the criminal process and the adoption of a procedural decision to initiate a criminal case, a primary, preliminary qualification of the crime is made, which can be supplemented, changed in the course of further investigation, which, in principle, is normal practice in the activities of the competent authorities.

First of all, it should be noted that the current Criminal Procedure Code of the Republic of Uzbekistan, in the relevant articles regulating the procedure for conducting an investigative action prior to the initiation of a criminal case, directly authorizes the production of a number of investigative actions: Article 137 authorizes an inspection of the scene of the incident, as well as according to Article 180 the appointment of an examination, allows according to Art. 1871 conducting an audit, does not prohibit in accordance with Art. 199-201 demand, presentation of objects and documents, and also does not regulate the procedure for conducting a survey and obtaining explanations, which are absolutely necessary to clarify the question of whether there is a basis for initiating a criminal case.

However, in part 2 of Article 329 of the CCP it is indicated that during the pre-investigation check, additional documents, explanations can be requested, as well as the detention of a person, an inspection of the scene of the incident, an examination, and an audit is appointed. In this case, we are dealing with the inconsistency of legal norms that arose, apparently, as a result of amendments and additions to certain articles, without taking into account the requirements of the norms governing the procedure for conducting investigative and procedural actions. Naturally, if any evidence is obtained from the results of the above actions during the pre-investigation check, the results of these investigative actions, despite the conflict of legal norms, should not become a victim of inconsistency of laws, allowing crime to evade responsibility, but should have the value of full-fledged evidence.

The above list of investigative actions at the stage of pre-investigation verification included such actions, without the performance of which it is difficult to

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establish the presence of signs of a crime. For example, without inspecting the scene, it is impossible to have at least any primary data about the event, to obtain material carriers of evidence, without an audit it is impossible to determine the amount of damage caused or unpaid tax, without an expert study it is impossible to find out the cause of death of a person, the nature and amount of harm caused to his health. , to classify the seized substances as narcotic, psychotropic or other substances prohibited in circulation and to answer a number of other important questions, which is absolutely necessary for a legal and reasonable solution to the issue of initiating a criminal case.

Also, at the stage of pre-investigation verification, in accordance with part 1 of Article 87 of the Criminal Procedure Code, it is permissible to carry out operational-search measures, however, due to the specifics and existing features of this type of activity, in order to avoid superficial and impartial discussion, it seems expedient to consider the admissibility of evidence obtained during operational-search activities as part of a separate study.

It is important to note that the results of the investigative actions carried out in the course of the pre-investigation check of the investigative actions provided for by the law in the event of the subsequent initiation of a criminal case are used in the preliminary investigation and trial of a criminal case as full-fledged evidence and do not require any legalization, verification or re-production of the same actions. At the same time, the production of investigative actions prior to the initiation of a criminal case, which according to the law can be carried out only in the process of preliminary investigation and are not provided for in the law with a direct indication of that, should entail the recognition of the evidence obtained as a result of this, inadmissible.

We would like to start with the study of such an investigative action as inspection and such a variety as inspection of the scene. Part1 of Article 136 of the CCP provides for all types of examinations at the stage of pre-investigation verification. However, Article 137 of the Code of Criminal Procedure separately stipulates the admissibility of an inspection of the scene before the initiation of a criminal case. The definition of the scene of the incident in the Criminal Procedure Code is not given, however, well-known scientists interpret it as follows - "the scene of the incident is an area or a room where traces of an event requiring investigation were found." [9, p. 41]

In addition, in accordance with paragraph 1 of part four of Article 91 of the Code of Criminal Procedure, when examining the scene of an especially serious crime, the course of the investigative action is subject to video recording. At the same time, the protocol of the investigative action must indicate the technical means used in the production of the investigative action, the conditions and procedure for their use. The protocol must state that the persons participating in the investigative action were warned in advance about the use of technical means in the production of the investigative action, and the record must be attached to the protocol of the investigative action. Failure to comply with the requirements of the Criminal Procedure Code on mandatory video recording of the course of the investigative action, as well as the loss of the recording, makes the resulting protocol of the investigative action questionable, i.e. admitting doubts about the reliability and, as a result, evidence that does not meet the requirements of admissibility. At the same time, attachments to the protocol of an investigative action cannot have an independent

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evidentiary value outside of the connection in the protocol itself. However, how an official carrying out a pre-investigation check, not yet having clear ideas and evidence of the committed event, can unequivocally qualify the committed act as a particularly grave crime, remains a question. In this regard, in order to avoid the rejection of important and irreplaceable evidence, practical workers must accompany each inspection of the scene with a video recording.

As mentioned, there are several types of inspections, and some of them, as independent types of inspection, are relatively rare. For example, the examination of documents or premises, as a separate investigative action, is not urgent and can be carried out in the course of the preliminary investigation without serious damage to the criminal case. However, if a specific locality, dwelling or other premises are at the same time the scene of the incident, or documents, are found at the scene of the actual or alleged crime, or were at the place where the corpse was found, then the relevant officials, based on Part 2 of Art. 137 of the Code of Criminal Procedure is entitled and even obliged to carry out a full inspection of these objects, with their removal from the scene. When inspecting the premises and the area, no search actions are expected (opening safes, moving installed furniture, and even more damage to property, etc.). Inspection of the scene involves, first of all, fixing the location, visually observed objects and documents at the place of production of the investigative action and their external state. The consolidation and strict observance of such rules will contribute to the legality of the pre-investigation check, preventing the substitution of the content of some investigative actions by others, which in turn will ensure the indisputability of the property of admissibility of evidence obtained at the stage of pre-investigation verification, not allowing to unreasonably expand the range of procedural and investigative actions before initiating a criminal case ...

If, during the pre-investigation check, the need to inspect the area and premises that are not the scene of the incident arises, the CPC provides for the mandatory issuance of a resolution, which will indicate the justifying reasons for its conduct. If the protocol of the investigative action is the result of the actions taken, then the grounds and reasons for its conduct must be indicated in the decision on the performance of the investigative action. Inspections of premises and terrain that are not the scene of the incident, without issuing a decision on its production, indicate a violation of the procedure for conducting an investigative action and entail the inadmissibility of evidence obtained during the investigative action.

At the stage of pre-investigation verification, objects or documents may be attached to an oral (including using sign language) or written statement of a person about a crime. In this case, the items and documents attached to the application must be examined and described in detail either in the protocol for accepting an oral application, or in a separate protocol for examining documents. If a statement of a crime was received by regular or e-mail and documents were attached to it (including in electronic form), then this also requires drawing up a protocol of inspection of the document, and in the case of an audio or video file, it is necessary, in addition to inspecting the medium, and indicate information about the characteristics of the media content, additionally carry out a transcript of the conversation, for attachment to the application. In this transcript, the communicating parties are not personified, i.e. only general generic designations are indicated - man, woman, interlocutor No. 1, No. 2. Even if the person carrying out the pre-investigation check recognizes someone in the voice of the attacker,

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before carrying out the relevant expert research, the indication of the identification data of a certain person will be unreasonable. In addition, the applicant, in each case, must be warned of criminal liability for knowingly false denunciation, which is indicated in the protocol for receiving an oral statement or a written statement and certified by the applicant's signature.

Often used in practice, granted to the investigator, the interrogating officer, the right, without seizure or search, to request documents and items for their temporary use in the performance of investigative actions also causes an ambiguous understanding. It should be noted that the legislator here, too, deprived of his attention the bodies carrying out the pre-investigation check. In particular, article 329 of the CCP provides for the possibility of requesting documents during the pre-investigation check, and in the articles regulating the procedure for carrying out this procedural action, the bodies carrying out the pre-investigation check are not indicated. Requesting documents and items, in accordance with Art. 199 and 201 of the Criminal Procedure Code is carried out on the basis of a requirement, which, apparently, should be understood as the direction of an official request (letter), binding on all institutions, enterprises, organizations, officials and citizens on behalf of the investigator, interrogator or their leaders.

However, what is the procedure for selection, seizure or presentation of documents and objects, is it possible to apply measures of procedural coercion, if so, to what extent it is possible, as well as what measures of responsibility for evasion or delay in the provision of these materials are available, the law does not give an answer. Upon receipt of items and documents, a protocol is drawn up for the submission of items and documents, however, the legislator has left the stages of search, discovery, selection of necessary items and documents outside the scope of legal regulation. The answer seems to be obvious. The usual and most common procedure for the seizure of necessary documents and items is carried out in the framework of such investigative actions as search and seizure. However, in the list of investigative actions, the production of which is allowed before the initiation of a criminal case during the pre-investigation check, there is no search and seizure in Art. 157-164 of the Criminal Procedure Code, there are no rules allowing their production before the initiation of a criminal case.

Documents and items that are important for the pre-investigation check carried out can also be seized during the inspection of the scene of the incident and the corpse, audit during arrest and even examination (for example, fingerprints and biological materials in the study of the crime instrument or biological materials during the forensic medical examination the victim himself). That is, the seizure of documents and objects during the pre-investigation check is also allowed as an integral part of other investigative and procedural actions permitted at this stage of criminal proceedings.

This also implies the inadmissibility of the widespread practice of drafting by law enforcement officers, not provided for by any laws, "protocols of seizure", "protocols of voluntary extradition" and other similar documents. Only scrupulous observance during the seizure of all the provisions of the law will make it possible to consider the relevant protocols of investigative actions, as well as the seized documents and objects themselves, as admissible evidence.

Consideration should be given to such forms of claiming documents and items that are closely related to the reasons for initiating a criminal case. In particular, from the point of view of law, enterprises, institutions and organizations, as well as their officials,

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can report to law enforcement agencies not only about those crimes that are committed on their territory, but also about any other crime they know. Although for initiating a pre-investigation check, the very fact of the appeal and its registration in accordance with the requirements of the Criminal Procedure Code is important, and not its literary form. Naturally, when applying, these subjects of legal relations may not be aware of the circumstances that are important for making a procedural decision. This deficiency can be eliminated, inter alia, by sending a request with the reclamation of documents and objects that are available for making a procedural decision.

When carrying out a pre-investigation check on media materials, it is necessary to take into account that publications in the press and other media can also be both true and false (deliberately or in view of delusion). Therefore, it is premature to make decisions on the merits only on the basis of voicing any information, without carrying out a full study and research of media materials. In this case, relationships arise between the authorities carrying out the pre-investigation check on the one hand, with the media representatives and the author of the publication on the other hand. The authorities carrying out the pre-investigation check, having received information about the committed or planned crime through the media, are obliged to check the reliability of the published information, for which it is necessary to obtain and evaluate this evidence by sending a request for the provision of documents and materials that were the primary sources of the publications carried out. Only adherence to this procedure will ensure admissibility and the possibility of making well-grounded procedural decisions.

After all, "any final decision that completes one or another procedural stage can be made only if there is a set of factual data sufficient to answer the main question of this stage. The factual data represent the grounds for the decision, and their establishment takes place by way of proof" [10, p.82]

In addition, according to part 2 of article 201 of the Criminal Procedure Code, at the request of authorized persons, officials of enterprises, institutions, organizations are obliged to carry out an audit or other official check within their competence. The need for this action is due to the fact that each organization, institution has its own local rules, about which the person carrying out the pre-investigation check, at the initial stage of the check, cannot have complete information, and therefore a service check is assigned. It is assumed that the persons conducting the official audit, being competent specialists, being guided, inter alia, by internal local acts, determine the legality of the actions of the inspected persons, or specifically indicate the violations or deviations committed by them. This issue is of particular importance when investigating crimes related to the activities of paramilitary or regime organizations and enterprises. The conclusion of an internal audit has the value of evidence, although preliminary, but it is necessary and meets the requirements of admissibility. An official check creates the preconditions for carrying out, after the initiation of a criminal case, individual investigative actions that are not duplicative, but rather aimed at strengthening the reliability of the conclusion of an official investigation.

Moreover, it should be borne in mind that the Criminal Procedure Code provides for audit as an investigative action, from which the audit carried out by the enterprise itself, the institution, the organization at the request of the inquiry officer, investigator and prosecutor, firstly, by the fact that only employees of the institution itself are involved, then how, within the framework of an investigative action, its conduct is

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entrusted to the bodies specified in Article 1873 of the CCP, secondly, it is carried out on the basis of a request (written request), and not a resolution, and thirdly, it is carried out in a specific direction (warehouse, cash desk) and within the framework of the shortcomings already identified there, fourthly, the procedure for its implementation is also regulated by internal acts, while the procedure for conducting an audit, as an investigative action, is regulated by the Criminal Procedure Code. Based on the results of the audit, an act is drawn up, submitted to the person carrying out the pre-investigation check, which has legal force and admissibility as evidence.

Another type of other procedural documents that we can find in the materials of the pre-investigation check are the reports of the employees who carried out the pre-investigation check. If information and traces indicating a crime are found, directly by the inquiry officer, investigator, prosecutor, as well as by the body carrying out the pre-investigation check, in the course of administrative or other procedural activities, signs of a crime and in the absence of the possibility of drawing up protocols of investigative actions, i.e. when the actions of the offender do not leave visible traces and they cannot be recorded (for example, a threat to a subordinate to a superior, the absence of a person sentenced to a sentence of restraint of liberty in the place where the serving of the sentence is determined), in practice, reports or acts are drawn up. It should be noted that a report (act) as a reason to initiate a case arises when there is neither a statement nor a confession, and the signs of a crime have nevertheless come to the attention of law enforcement agencies, which are obliged to identify crimes and expose the perpetrators. Therefore, the issue of recognizing a report or act as another procedural document, in the context of a legislative gap, as admissible evidence is an object of controversy.

A report (act), having no procedural regulation, can also serve as a means of derivative fixation, i.e. facts and events recorded in the protocols of investigative actions, conclusions based on the results of studying the requested documents or audits carried out, official proceedings are indicated in the reports in the notification and permissive direction. Thus, the person carrying out the pre-investigation check usually informs his manager about the intermediate results of the pre-investigation check (because the final result of the pre-investigation check is the adoption of a procedural decision, drawn up in the form of a resolution) and either notifies about the planned measures, or asks for permission to carrying out further verification actions. These documents, subject to certain requirements, can be recognized as admissible within the framework of a pre-investigation check, only if they are used as sources of reference or indicative information, i.e. in terms of legal force, they cannot be compared with the protocols of investigative actions. In the case when the reports actually replace the protocols of investigative and procedural actions (examination, presentation of objects, documents and questioning), they cannot be recognized as admissible and form the basis for making a procedural decision.

Also, for crimes with an administrative prejudice, there is involvement in the orbit of pre-investigation verification of procedural documents drawn up in accordance with the Code of Administrative Responsibility for revealed offenses, which, by virtue of the requirements of the law, are now subject to qualification under articles of the Criminal Code. In this case, procedural documents drawn up in accordance with the requirements of the Code of Administrative Responsibility after an appropriate assessment could be recognized as admissible if it were not for the imperative requirement of Part 1 of Article 90 of the

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CCP that information and objects can be used as evidence only after they have been recorded in the protocols of investigative actions.

Next, it is necessary to consider the issue of the admissibility of conducting examinations. Although the Code of Criminal Procedure does not prohibit or restrict the appointment of any types of examinations, nevertheless, in practice and in the literature, the question of what kind of forensic examinations is advisable and permissible to appoint and conduct during the pre-investigation check is also discussed. In particular, practitioners often experience a shortage of time, and therefore, the authorized person, trying to ensure, after the initiation of a criminal case, more acceptable conditions for the subsequent investigation or for "safety net", or to justify the extension of the pre-investigation inspection period, may appoint expert examinations and "wait". At the same time, we must not forget about the main task of the pre-investigation check, which is to establish sufficient data indicating signs of a crime. In this connection, when comprehending this issue, it seems that it is necessary to proceed from the requirements of Article 173 of the Criminal Procedure Code, which provides for cases of mandatory appointment of an examination, i.e. without the conclusions of which it is difficult to resolve the issue of the availability of sufficient data indicating signs of a crime. For example, conclusions on the nature and degree of harm to health, on the causes of death, on the classification of seized items as firearms or cold weapons, explosive, narcotic, psychotropic substances or their analogues, and others. It is necessary to take into account the well-grounded opinion that it is fundamentally unacceptable to appoint and conduct, at the stage of pre-investigation, forensic psychiatric, psychological-psychiatric and sexological-psychiatric examinations. [11]

Appointment of examinations at the stage of pre-investigation verification may seem completely harmless, because on various issues that require their permission, reasonable conclusions of a competent person will be obtained. Then why not appoint any possible types of examinations during the pre-investigation check? The fallacy of this opinion can be judged on the following grounds. First, at the stage of pre-investigation verification, the rights of potential suspects may be affected, which are not regulated in any way at the stage of pre-investigation verification. Whereas when appointing an examination within the framework of an initiated case, the suspects have the rights that provide the opportunity to participate and express their opinion regarding the decision to appoint an examination. Secondly, when conducting expert examinations, as a result of which material evidence is completely consumed, in the event of a subsequent application by the suspect of a petition and justifying the need for an additional or repeated expert examination, its execution will be simply impossible. Thirdly, the term of the pre-investigation check in accordance with Art. 329 of the Criminal Procedure Code is limited to 10 days, which can be extended if there are grounds for up to 30 days and in order to avoid an unreasonable extension of the pre-investigation check period, it is necessary to be guided by the collection of the necessary evidence sufficient to solve the tasks of the stage.

The issue of the legality of the audit during the pre-investigation check also needs clarification. In practice, audits are in demand mainly in proceedings on cases of certain crimes of an economic nature. An audit of legal entities and individual entrepreneurs is appointed when information about the circumstances relevant to the case can be obtained by studying and comparing accounting, financial, statistical, banking and other documents of the audited entities.

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In connection with the reforms carried out in our country on the initiative of the President of the Republic of Uzbekistan aimed at supporting entrepreneurship, the audit of business entities is carried out only within the framework of a criminal case initiated on the facts of already revealed violation of the law by him, i.e. at the stage of pre-investigation verification, an audit of business entities cannot be carried out and entails the inadmissibility of audit acts as evidence. At the same time, before the initiation of a criminal case, an audit can be carried out in relation to other legal entities (budgetary and non-profit organizations). [12]

The audit in relation to business entities is carried out on the basis of the results of the "risk analysis" system, which involves the initiation of inspections based on the degree of risk of violations of the law by the relevant business entity after registration in the Unified Electronic Registration System of inspections. [thirteen]

In Appendix No. 2 to the Decree of the President of the Republic of Uzbekistan dated

On July 27, 2018, No. UP-5490 provides for the List of inspections carried out in order to notify the authorized body by registering them in the Unified System for Electronic Registration of Inspections.

Based on the foregoing, other types of audits, non-observance of the order or their conduct by unauthorized entities at the stage of pre-investigation verification are not permissible, and all the above violations of the audit entail the inadmissibility of using the evidence obtained during the audit as grounds for initiating a criminal case.

As we said, information obtained as a result of investigative actions carried out during the pre-investigation check will have the value of evidence in a criminal case if it has the properties of admissibility, that is, it will be obtained in compliance with all the requirements of the criminal procedure law regarding both the form and and content. However, a significant part of the materials of the pre-investigation check is information obtained not through the production of investigative actions, but as a result of the implementation of other verification measures not stipulated by the law, in particular, upon receipt of explanations from various persons. However, the text of the Criminal Procedure Code does not disclose the content of the term explanation, nor does it regulate the procedure for producing the specified verification action, nor the procedural document that must formalize its course and results. The laws regulating the activities of law enforcement agencies ("On the Internal Affairs Bodies", "On the State Security Service of the Republic of Uzbekistan", "On the National Guard of the Republic of Uzbekistan") provide for the mandatory fulfillment by all state bodies, other organizations, officials and citizens of the requirements for giving explanations about the revealed violations of the law.

One of the most important properties of the legal process is documenting its progress and results. This is achieved through a legally established system of procedural documentation. [14, p.242]

So, in Art. 144 of the Code of Criminal Procedure of the Russian Federation, the right of an investigator, an interrogator and their leaders, when checking reports of crimes, to receive explanations is specified, as well as the obligation to explain to persons participating in the production of procedural actions their rights: the right not to testify against oneself, one's spouse (spouse) and other relatives relatives; use the services of a lawyer; to bring complaints about actions

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(inaction) and decisions of the investigator and other officials. [15]

However, in the national legislation there is no regulation of the procedural procedure for the selection of explanations, the existence of any rights of persons who receive explanations, the possibility of applying procedural coercion measures and the consequences of refusing to write an explanation, especially for persons whose actions are subject to verification.

The question arises as to what type of evidence can be attributed to explanations? It seems that all the pre-investigation materials obtained not as a result of investigative actions: explanations, acts of official checks and audits are obtained as a result of procedural actions and their order is not strictly regulated, there are no formal requirements imposed by the law on this type of documents, which, of course , should be taken into account when assessing their legal effect. However, it would be wrong to underestimate them. Sometimes they can play, and often play, a decisive role in disclosing, investigating crimes and exposing the perpetrators.

Getting an explanation is the most common pre-investigation check. Investigative practice allows us to conclude that a survey is carried out during each pre-investigation check and consideration of statements and reports of a crime. In the materials of criminal cases, explanations may be absent in very rare cases. Explanations must be obtained from the applicants, victims, eyewitnesses, persons in respect of whom the check is carried out. The purpose of the explanation is to collect information on facts and events as soon as possible in order to make a legal and reasonable procedural decision on the conducted pre-investigation check.

The process of obtaining an explanation is a verification action, which consists in interviewing the interviewed person in order to obtain information regarding the subject of the pre-investigation verification. An interrogation is similar in its essence to such an investigative action as an interrogation, and explanations - to testimony; also during interrogation, a warning about criminal liability has legal consequences, while when receiving an explanation, this plays only a formal role, and therefore, in terms of evidentiary power, the explanation is inferior interrogation protocol. As V.Yu. Stelmakh rightly noted, “the differences between them are more of a formal legal nature and are due to the peculiarities of the normative regulation, and not the content” [16, p. 148]

Is it possible to consider the data indicated in the explanation admissible if the procedure for obtaining and determining them is not given to the explanations. V.S. Balakshin, points out that the law should "spell out a clear, common sense mechanism for involving explanations in the sphere of criminal proceedings, checking, assessing their relevance, admissibility and reliability, like any other evidence" [17, p. 126].

To eliminate this gap in the legislation, B.A. Rajabov proposed to make appropriate additions to the criminal procedure law, indicating that “obtaining an explanatory note is a procedural action consisting in the receipt of information in writing by authorized subjects from citizens and officials who have this information about the circumstances relevant to the resolution of the case on the merits ”, and also presented opinions on the procedure necessary for the implementation of the receipt of the explanatory letter. [18, p.48].

At the same time, among the scientists of the Russian Federation, there are polar points of view on the

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evidentiary power of explanations. Some scholars denied it [19, p. 41], others considered it possible to equate explanations with testimonies [20, p. 78], and still others attributed the explanations to other documents [21, p. 54–55]. This dispute by its definition was resolved by the Constitutional Court of the Russian Federation of May 28, 2013 No. 723-O, having determined that the explanations received before the initiation of the criminal case refer to "other documents" [22].

The national investigative and judicial practice, lacking proper regulation, also follows the latter path and classifies explanations among other documents. The assignment of explanations to other documents seems to be a procedurally justified solution to the problem being analyzed. In particular, the phrase "other documents" is used in Art. 26 of the Code of Criminal Procedure of the Republic of Uzbekistan as documents existing separately and at the same time in parallel with protocols of investigative actions. In addition, when drawing up an indictment in criminal cases in its relevant part, the explanations of persons are indicated among the "other documents" confirming the guilt of the accused.

At the same time, one cannot ignore the conditions, the observance of which will allow attributing explanations to admissible evidence. It is advisable to fix such conditions in the criminal procedure law. First, a detailed regulation of the procedure for calling and conducting a survey is necessary, including in relation to a separate category of the algorithm of actions performed and the consolidation of its results. Giving the necessary procedural form is absolutely necessary to obtain admissible evidence. Secondly, indicate the rights and obligations of the respondents, as well as provide for cases limiting the right to receive explanations, by analogy with witness immunity.

Thirdly, it is advisable to evaluate explanations as evidence in conjunction with other evidence, which acquires the value of a separate evidence in the absence of the opportunity to interrogate a previously interviewed person, or in connection with changes in the initially presented testimony. This rule is due to situations where there is reason to believe that a significant change by the person interrogated in the previously reported information is caused by the influence of other persons or an attempt to avoid responsibility. If there are significant contradictions in the explanations and testimonies of the same person, the possibility of examining explanations as evidence in a criminal case and assessing them in conjunction with other evidence is important for considering a criminal case on the merits.

The need to use explanations is also substantiated in A.V. Belousov [23, p. 69-71].

Also, legislative consolidation is subject to the obligation, in appropriate cases, to ensure the participation in the survey of an interpreter, a legal representative of an incapacitated or minor, a teacher, a psychologist and cases of their inadmissibility or replacement, which has been repeatedly paid attention to in science. [24, p. 29]

Thus, the explanations received by the appropriate person, clothed in the form of procedural documents, not only serve as primary data indicating signs of a crime, but can also be quite admissible evidence in a criminal case.

According to part 2 of Article 87 of the CCP, the accused and his defense counsel may also participate in the proof in criminal cases, including presenting evidence. The possibility of participation of defenders (lawyers) during the pre-investigation check is limited. According to the Code of Criminal Procedure, the initial

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possible moment for a defense attorney to enter the criminal process is the participation in the interrogation of a person called as a witness, which, of course, is carried out within the framework of an already initiated criminal case. In this connection, it is necessary to state that there is no possibility of participation in the proof of defenders (lawyers) at the stage of pre-investigation verification, which, of course, does not contribute to the protection of the rights, freedoms and legitimate interests of the participants in the process, as well as to ensure the adversarial process.

Summing up all of the above, as requirements for the admissibility of evidence obtained in the course of investigative and procedural actions, it is necessary to take into account as general requirements for conducting investigative actions, which should include: compliance with the principles of the criminal process, ensuring the protection of state secrets, compliance and ensuring guaranteed rights participants in the process, general rules for securing evidence in protocols and auxiliary methods for securing evidence, as well as special requirements provided for by the very procedure for conducting investigative actions (mandatory participation of attesting witnesses, issuance of a resolution and rules for drawing up a protocol, procedure for conducting an audit, etc.)

Violation of general and special requirements for the procedure for conducting a procedural action, as a way of collecting evidence, does not always give rise to doubts about the reliability that could not be eliminated. The types of violations can be grouped into the following groups:

1. Violations that distort the essence and content of a procedural action always give rise to irreparable doubts about the reliability of information and, as a consequence, affect their admissibility. Under no circumstances can they be admitted, and moreover, their presence will alienate from the main goal of the criminal process - the truth.
2. Violations regarding the form of securing evidence do not always entail their inadmissibility. In case of individual violations, there is a possibility of their elimination by carrying out additional procedural actions, i.e. in case of admitting violations related to the procedure for fixing, registration of the course and results in the corresponding protocols of investigative actions, the issue of their elimination can be considered. The disadvantages of the procedural form can be eliminated by carrying out additional investigative and procedural actions. Only in this case it is possible to recognize the initial information about the facts, in conjunction with the data that eliminate doubts about their reliability, meeting the requirement of admissibility.

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