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Research Article

THE PRELIMINARY HEARING – THE CENTRAL STAGE OF THE COURT PROCEEDINGS

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ABSTRACT

The article examines the theoretical and practical aspects of the institute of preliminary hearing in the criminal procedure of the Republic of Uzbekistan, examines historical types of legal proceedings through the lens of the institution under consideration, conducts a comparative analysis of the functioning of the preliminary hearing in the criminal procedure of other countries. In addition, the algorithms of its action and its influence on the implementation of procedural functions by the participants in the criminal procedure are comprehensively discussed.

KEYWORDS

Ordering the criminal case to trial, issues to be clarified in terms of the case; preliminary hearing; procedural functions in criminal proceedings.

INTRODUCTION

There have been three models of the stage of ordering the criminal case to trial throughout the history of criminal proceedings:

- An adversarial-security model (состязательно-обеспечительная модель), characterized by the following features: consideration of all issues of

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the stage in the form of a court session; adversarial proceedings; mandatory participation of the public prosecutor, the accused, and the defense counsel;

- A revision-investigative model (ревизионно-розыскная модель), characterized by the judge's appointment of a meeting outside the framework of the judicial procedure and a non-adversarial procedure;
- A combined model (смешанная модель), which comprises holding the stage of scheduling a court session in a combined form, consisting simultaneously of the procedures of the first and second models.

It should be emphasized that the stage of ordering a court session in our republic corresponds to the revision-investigative model, whereas the adversarial-security model, while the most optimal in the world is the adversarial-security model, which is expressed in the form of a preliminary hearing.

What is the purpose of a preliminary hearing? To begin with, it should be emphasized that the traditional form of preliminary hearing originated and developed in the English criminal justice system.

The preliminary hearing of the case is a form of direct judicial oversight over the compliance of the actions of the bodies of inquiry and preliminary investigation in compliance with the requirements of the law at the stage of preparation for the court session. In this stage, the main issues of the further development of the criminal case are resolved through the application of the principle of adversarial proceedings in order to achieve the objectives of criminal proceedings.

In fact, determining what should be invested in the definition of the English concept of "criminal procedure" - which is part of the state's response to a crime and part of the mechanism by which substantive criminal law is administered to people [1, p.21] - is difficult.

Interestingly, the accused's innocence is never established under the English criminal procedure, and even if he is acquitted, that does not indicate he was not involved in the crime [2, p.19].

The preliminary hearing can be traced back to the English criminal process, which served as the foundation for the entire Anglo-Saxon legal system. In the Anglo-Saxon process, a preliminary hearing is held, which is conducted by a magistrate with the participation of the parties and in an adversarial manner. Here the prosecutor gives enough evidence in his opinion, and the defense has the right to scrutinize and challenge them (subject to cross-examination of witnesses) as well as present their evidence [3, p.33].

In the English preliminary hearing, the evidence collected by the prosecution is commonly 'probed'. At this point, the defense prefers not to publicize their own evidence, preferring to save it for the main trial. This stage cannot be regarded complete even after the decision to bring the accused to trial. The start of the trial is preceded by the 'disclosure of evidence' method, which means that each of the parties gets acquainted with the opponent's evidence base by assembling the materials for 'their own dossier' [4, p.56].

The preliminary examination procedure is used in US magistrate courts in a similar way. To put it another way, the American version of preliminary hearings is fairly similar to the English version, but there are a few differences. A preliminary hearing is typically utilized in the United States in situations of serious crimes (felony) for which arrest is sought. The preliminary hearing in the United States is structured as follows: the beginning of the preliminary hearing is the moment

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the relevant judge or other official registers the indictment document. At the preliminary hearing, the following issues will be considered: the choice of a preventive measure (in most cases, such preventive measures as arrest, bail, and personal guarantee are used); the possibility of reaching a 'plea deal'; resolution of the accused's petitions to call additional witnesses; and a partial familiarization of the parties with the evidence they have gathered. The preliminary hearing outcomes are used to determine whether adequate grounds have been established for the matter to be advanced further. If there are sufficient grounds to hold the accused accountable for a serious offense, the magistrate (judge) decides to forward the accusatory document to the court, which will assess the case on its merits (trial court) [5, p.43].

It is worth noting that in the United States, the preliminary hearing is the central platform for all criminal procedures, with 96 percent of all criminal cases being settled at the preliminary hearing and only 4% of cases reaching the grand jury! Undoubtedly, this is due to the hyper-enhanced adversarial process of the US trial, in which the preliminary hearing is used to "actively dialogue" between the prosecution and defense positions on the 'quality' and 'procedural consequences' of the collected evidence, rather than to clarify the actual circumstances of the crime event.

It is worth noting that in the German criminal justice system, the stage of bringing a case to trial has long been regarded as extremely questionable. It was liquidated and restored several times. Opponents' main point is that taking the accused to trial entails acknowledging the pre-trial consideration of the case presented against him for committing a crime. To address this serious accusation, part 1 of 207 of the Code of Criminal Procedure of the Federal Republic of Germany, new edition, states that the judgement on bringing to trial only reflects the prosecution's admission to consideration in the trial [6, p.9]. However, it is impossible to deny that the choice to bring the accused to trial will have an impact on the judge who will hear the case.

It is certainly possible to concentrate on the German model of prosecution, but it does not fit all of the criteria for the structure and concept of the national Criminal Procedure Law. For example, § 202a. of the Code of Criminal Procedure of Germany provides for the so-called preliminary discussion. That is, if the court is willing to open the main court proceedings, it may discuss the status of the case with the parties involved to see and if it is thus possible to speed up the proceedings. The case file contains the major points of the discussion. In German criminal proceedings, court agreements can only be reached during the main trial (see p.257). However, the legislator gives the participants in the process with the possibility to interact in order to prepare an agreement at virtually any level of criminal proceedings [7, p.532] in sections 160b, 202a, 212, and 257b.

The presence of such communication in the German procedure once again demonstrates logicality and acceptability of introducing a preliminary hearing into the Criminal Procedure Legislation of the Republic of Uzbekistan at the stage of ordering a case to trial.

It should be noted that a comparative analysis of the legislation of Germany and Uzbekistan in terms of the stage of bringing to trial revealed a number of similar features, which can be explained by the importance of both forms to a single model of judicial functioning, with the court taking an active role. Nonetheless, the German methodology of assigning a case to trial is more reasonable and rational than its counterpart in our national legislation. As a result, it appears acceptable to sensibly and optimally incorporate

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foreign experience into the legislation of Uzbekistan, particularly German law enforcement practice.

The experience of the jurisdictions in the near abroad is particularly valuable since, like Uzbekistan, they are all linked by a common historical past and a long-standing community of political, economic, and social interests. Although the preliminary hearing procedure is known by different names in countries such as the Russian Federation, Kazakhstan, Kyrgyzstan (preliminary hearing), Azerbaijan (preparatory hearing), Turkmenistan (preliminary hearing), and Moldova (preliminary hearing), it is essentially the same in all of them. That is, the preliminary hearing is held by the same judge who will later assess the matter on the merits, rather than by a specialist judge.

The following requirements are necessary general aspects of this order, according to the practice of the institute of preliminary hearing in nations with Anglo-Saxon and continental legal systems, as well as CIS countries:

1) A preliminary hearing is an alternate method of ordering a case for trial that is conducted by the court in accordance with a certain procedural order;
2) The activities of the court are aimed at resolving the issues on the merits that served as the basis for holding a preliminary hearing;
3) The decision to have a preliminary hearing, as well as the subject and scope of its proceedings, are initially constrained by law or the subjective will of the parties;
4) During the preliminary hearing, the parties may discuss the sufficiency of the grounds for considering the case in court, the scope of the charge, the availability of evidence, and compliance with the requirements of the law;
5) The preliminary hearing clarifies whether the parties' submitted applications and petitions deserve satisfaction;
6) The preliminary hearing concludes with the adoption of a court order - a ruling.

What opportunities and benefits does the preliminary hearing afford for the parties in the process, particularly for the accused and the defense as a whole?

Today, the court, entering the trial process, has in front of it all the case materials provided by the prosecution. Unfortunately, save for petitions and complaints that have passed the preliminary investigation stage, the defense side is unable to offer anything to the court. Furthermore, the court first examines the preliminary investigation materials, forming a general and particular impression (some propositions) about the crime event, the defendant, the victim, witnesses, other circumstances, and evidence in advance. In such circumstances, the court will find it difficult to retain total impartiality and open-mindedness when assessing a criminal case, as the law requires.

The current arrangement, in which the judge decides on the advancement of the criminal case 'in the office form', without the participation of the parties, prevents the defense from approaching the court and presenting its views. That is why it is necessary to create a special judicial procedure in which, at the request of the court or the parties, the issue of the impossibility of conducting a trial and the need to decide whether to suspend the case, return it to a previous stage, or even terminate it thoroughly is discussed.

The defense side, in our opinion, is especially essential at a preliminary hearing since it provides opposing parties in an adversarial process, as well as the

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opportunity to dispute objective points made by the accuser or to discredit the prosecution's line in general.

Another significant feature is that, once again, the defense side is the primary originator of declaring evidence inadmissible (and therefore, the accused). As a result, the process is activated, 'revived', and the prosecution is forced to be 'in tough condition', diligently prepare for the process, bringing this stage out of the shell of empty 'formalism' to the level of procedural 'reality'.

What obligations and requirements does a preliminary hearing place on the people in charge of a criminal case (inquiry officer, investigator, prosecutor)?

The examination of practice reveals that pre-trial processes are frequently marred by two types of flaws: a) insufficient preliminary inquiry; and b) severe violations of criminal procedure law requirements.

The insufficient investigation of the circumstances of the crime or the inadequacy of the obtained evidence verifying the commission of the crime by the person involved as the accused are examples of the first group shortcomings. The second category covers situations in which there is sufficient evidence, but substantial violations of the Code of Criminal Procedure were committed throughout the collection process (the use of unacceptable illegal methods in proving or conducting investigative actions at night).

Unfortunately, the current situation at the preliminary investigation stage is such that, due to the influence of certain objective and subjective factors (such as a 'lack' of experienced qualified personnel in the investigative apparatus, particularly in the regional offices; the near loss of the 'investigative scientific school'; unreasonably large amount of work; there is still the presence in the minds of investigators of such an old Soviet stereotype of thinking as "there is a mistake in the case - the court will correct it"; the tendency is to chase after 'figures and reports' even in matters of the fate of man; there is a considerable decline in the quality of the investigation due to a decrease in the efficacy of prosecution supervision over the inquiry (because to the load of innumerable responsibilities and functions of the prosecutor's office).

A preliminary hearing, for example, is one of the best ways to eliminate such negative practices. Why? Because the preliminary hearing is the first step in "sifting through a sieve" criminal cases for quality, it is here that the defense calls the court's attention to the investigation's flaws and begins the 'cleaning' of the accusatory basis of inadmissible and poor-quality material. As a result, only cases that are 'ready' to go to trial are admitted.

What kind of soil will be prepared by this filter? In the future, the investigating body, realizing the risk of the criminal case 'collapsing' even during the preliminary hearing, will be directly 'interested' in the quality of the investigation and will: refrain from using unacceptable methods in the process of proving; subject to a more thorough study of the risks of the criminal case being terminated or suspended, will finally 'reckon' with the defense arguments and objections, and not ignore them.

And the prosecutor, in turn, will be obliged to examine the criminal case carefully and comprehensively - from the standpoint of his personal responsibility for his 'defense' in the preliminary hearing - rather than simply signing it before sending it to the court with the case materials as is customary.

What are the advantages of a preliminary hearing for the judge and the trial's overall effectiveness?

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Now we shall look at the benefits of a preliminary hearing through the lens of the judge's (court's) 'interests' as the central issue of justice administration.

To begin with, the judge will be freed from the duty to "officially transfer" the case to trial if he is forced to ignore the investigation's flaws due to a lack of real powers to correct them.

Second, the pros of exploring the issues of the subsequent 'perspective' of the criminal case with active participation of the parties is that the adversarial environment of the preliminary hearing simplifies the judge's work, and in particular, even before the start of the main court session - on the eve of it, in the conditions of "adversary participation of the parties" from the position of an active participant in proving, the judge smoothly moves into the position of a neutral observer.

Third, there are more examples now in judicial practice where prosecutors are not well prepared to support public prosecution in court. As a result, the judge is forced to 'take over' some aspects of the prosecutor's function in the trial (for example, when the prosecutor, who has practically not studied the criminal case, is unable to lead the line of prosecution and ask questions to the participants in the trial in the judicial investigation, the questions are asked by the judge himself). This is an obviously terrible trend that leads to a muddled understanding of procedural functions, and the worst part is that it leads to a conclusion in the minds of the trial participants about the judge's accusatory prejudice. In addition, at the preliminary hearing, the prosecutor acts as a true 'owner' of the prosecution, rather than delegating to the judge duties that are unique for his position.

Finally, it is at the preliminary hearing that the judge will truly exert judicial control over the investigative authorities' operations, with all the repercussions it entails.

What is the format of the preliminary hearing?

The following algorithm appears to be appropriate for conducting a preliminary hearing on the case: If the judge believes the circumstances of the criminal case are not properly clarified, or if he perceives grounds that prevent the case from moving forward, he schedules a preliminary hearing for the case no later than ten days after it is received by the court. The judge conducts the case's preliminary hearing alone, with the parties present in a private court session.

If the defense counsel fails to arrive for unexplained reasons, or if his participation in the preliminary hearing is impracticable, the judge must take steps to ensure that the newly appointed defense counsel is present in court. The preliminary hearing of the case will not be postponed if the victim and his representation, civil plaintiff, civil defendant, or their representatives fail to appear at the court session.

The parties' motions may be considered at the preliminary hearing. When a party files a motion to exclude evidence, the court inquires of the opposing party to see if it has any objections to the application. The judge grants the motion if there are no objections. If the defense party's request for additional evidence or items is relevant to the criminal case, the defense party's petition will be granted.

Minutes are kept during the preliminary hearing of the case in accordance with the rules set forth in the Code of Criminal Procedure.

A ruling is issued based on the results of the case's preliminary hearing, which lays out the conclusion on the problems at hand. If there are no grounds for suspending the proceedings on the case, for

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terminating the case or returning the criminal case to the prosecutor, the court shall issue a ruling appointing the case for trial.

The preliminary hearing is the most important stage in the process of removing inadmissible evidence from the accusatory base! It should be highlighted that the parties, or rather the defense, are the primary initiators of evidence being declared inadmissible. The existing Code of Criminal Procedure does not give the parties a direct right to request that certain evidence be excluded from the charge. In the preparation phase of the court session, the right to engage in the process of revising the evidence base is partially present.

As a result, the parties may request fresh witnesses, experts, or specialists, as well as material evidence and documents. However, there is no question of evidence exclusion in this case. The fundamental instrument for ensuring the 'quality' of a criminal case is declaring evidence inadmissible and removing it from the evidence base. How will this process be carried out?

The parties may file a move to exclude any material from the list of evidence produced in court proceedings during the preliminary hearing. If a motion is made, a copy of it must be given to the opposing party on the day it is filed with the court.

A motion to exclude evidence must contain indications of:

1) The evidence sought to be excluded by the party;
2) The grounds for excluding evidence set forth in this Code, as well as the circumstances supporting the petition.

The judge has the authority to question the witness and attach to the criminal case the document indicated in the petition. If one of the parties objects to the evidence being excluded, the judge has the authority to announce the investigative protocols and other documents available in the criminal case and/or presented by the parties.

The burden of proof is on the public prosecutor to refute the defense's arguments when considering a motion to exclude evidence filed by the defense on the grounds that the evidence was obtained in violation of the requirements of this Code. In other circumstances, the party who filed the petition bears the burden of proof.

If the judge grants the petition for evidence exclusion while also scheduling a court session, the ruling specifies what evidence is excluded and what papers from the criminal case, supporting the exclusion, cannot be examined or read out in the court session and used in the proving process. Excluded evidence is no longer admissible in court and cannot be used to support a verdict or other judicial decision.

To summarize, the introduction of a preliminary hearing into national legislation serves to truly ensure the principle of adversarial action through active participation of the process subjects, strengthening and expanding the procedural powers of the court, which saves time and effort for the court, law enforcement agencies, and citizens, as well as timely restoration of the violated rights of persons participating in criminal proceedings.

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