



THE EMERGENCE AND DEVELOPMENT TENDENCIES OF THE INVESTIGATIVE ACTION FOR RECOGNITION IN THE CRIMINAL PROCESS

Ummatov Mamarasul Tursunovich

Responsible officer of the Department of Public Security of the Ministry
of Internal Affairs of the Republic of Uzbekistan, Doctor of Philosophy in
Legal Sciences (PhD)

(E-mail: mamarasulummatov@gmail.com)

<https://doi.org/10.5281/zenodo.8134626>

Annotation: the article comments on the emergence and development trends of the investigative act of presentation for recognition in criminal proceedings, and analyzes the foreign experience and the opinions of legal scholars in this regard.

Keywords: Recognition, investigation, investigative act, show for recognition, investigator.

If we pay attention to the comments given in the "Annotated Dictionary of the Uzbek Language" about showing in order to recognize, then the dictionary meaning of the term "Know" is explained as "To know, distinguish someone, something that belongs to oneself or is familiar by its appearance or some other sign."¹ Although this explanation is not legal, it is consistent with the content of the investigative act of presentation for recognition in CPC.

Determining the prospects for improvement of the investigative act of presentation for recognition in the criminal process and revealing its procedural and legal importance in depth requires the study of the stages of development of this investigative act and its social necessity.

Procedural rules regarding the investigative action to show for recognition have gone through a number of stages to date. Historical sources and a number of legal literature contain information on the fact that in ancient states that originally existed on the territory of our country, criminal proceedings were carried out on the basis of customary law and Sharia norms².

Customary law was regulated on the basis of the book "Avesta", which is the main source of Zoroastrian religion, and was in practice until the 7th-8th centuries AD.

« According to the norms of customary law defined in Avesta:³ "confessions of the guilty party, testimony of witnesses, swearing, etc. are accepted as evidence in court. During the trial, various tortures were used, such as fire, hot iron pressing, molten lead on the chest."

Sharia norms are based on Muslim law and are regulated based on four sources (Holy Qur'an, Hadiths, Ijma and Qiyas). In the state, court cases were conducted by judges, and military cases were considered by military judges, and in these periods there were no concepts of investigative action or preliminary investigation, and the work of the supreme

¹ Annotated dictionary of the Uzbek language — letter T [Electronic source] // URL: http://n.ziyouz.com/books/uzbek_tilining_izohli_lugati/Uzbek%20tilining%20izohli%20lug'ati%20-%20T.pdf (referenced time: 22.12.2019).

² Murodov B.B., Dostmurodov U.I. Emergence and stages of development of the grounds for closing the criminal case // Newsletter of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. — 2017. — No. 4. — B. 25-26

³ Mominov M.E. Procedural formation of formalization of evidence in criminal proceedings (historical aspect) // Bulletin of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. — 2010. — No. 4. — B. 77.

court was under the strict control of the khan and amir.

The analysis of legal sources related to the history of the state and law shows that in some state structures in the territory of our country, the issues of crime and punishment are regulated by legal norms adopted in the name of the law or equivalent to it, in addition to custom and sharia norms.

Although the examples of the statehood of the ancient Turkic peoples have not come down to us in full, such documents include the "Yaso Laws" created in 1206, the "Temur Tuzuklari", which is considered the largest code of secular legislation, the manuals of the Uzbek khans from the main rules of Sharia (for example, Suluk-al muluk), as well as in the khanates. it is sufficient to indicate the existence of legal norms established by the court, oral or written decrees on criminal punishment issues, which provide for punishments not provided for in Sharia.

If we take a look at the literature on Muslim law, it can be seen that in the state structures of the Republic of Kazakhstan, although showing for recognition was not widely used as an investigative action, some of its elements existed even in those times. it can be observed that there is information on the fact that the cases where he recognized and showed the objects served as the most important evidence in such cases.

In particular, in the book of Hidaya, a commentary on Muslim law, a person who complains to the court to claim property recovery is considered a plaintiff, and he must show the extent of the damage caused to him, as well as identify and show these items without anyone's help. These actions were carried out during the interrogation process in the presence of the judge.

Of course, even though the stolen items that needed to be identified in those times did not fully correspond to the investigative action of presenting for identification, which is carried out in judicial investigation practice today, the above information allows us to conclude that the act of presenting for recognition was observed in the practice of judges in state structures in the territory of our republic.

After the territory of our country was transferred to the administration of Tsarist Russia, a number of legal acts were adopted in the field of conducting criminal proceedings, but these documents did not prohibit the use of Sharia and customary norms by the courts⁴.

Later, codified laws such as the Criminal Procedure Code of the RSFSR in 1922 and the two Criminal Procedure Codes of the Uzbek SSR in 1926 and 1929 were adopted, but in these procedural documents, the act of presenting for recognition was not defined as an investigative act. It can even be seen that the act of presenting for recognition as an investigative act was not defined in the 1864 Statute of Judicial Proceedings⁵.

However, the analysis of some legal literature shows that although the criminal procedure code of the RSFSR of 1922 and the two criminal procedure codes of the Uzbek SSR of 1926 and 1929 do not define the act of showing for recognition as an investigative act, in fact it was a judicial act several years before the adoption of these procedural documents. it shows that it is used in the process of proof as a procedural act formalized by the "deed of presentation for identification in the preliminary investigation" in investigative practice.

⁴ See: Abdumajidov G. Razvitie zakonodatelstva o rassledovanii prespleniy. - T., 1974. - S. 8.; Chutbaev M.R. Retrospective analysis of the legal regulation of issues of restriction of personal rights in the preliminary investigation // Bulletin of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. – 2011. – No. 4. – B. 85.

⁵ Rossiiskoe zakonodatelstvo X-XX centuries. T.8. Judicial reform. - M.: Law. Lit., 1991. - S. 118-251.

In the opinions confirming that the investigative action of showing for identification was part of the investigative action of face-to-face investigation, they emphasize that as a result of this investigative action, only persons were shown for recognition, and according to the results of the face-to-face examination, only the part of the testimony given in the previous interrogation aimed at identifying persons was examined.

The opinion confirming that the investigative act of showing for recognition was a part of interrogation as a procedural act was put forward by M.S. distinguished the type and noted that the first is the identification of people and the second is the identification of things.

It should be noted that in the Criminal Code of the Uzbek SSR of 1959, identification was defined as an investigative act, but the fact that it was not allocated a separate chapter and placed in one chapter with other investigative actions reduced the possibility of its more active use in judicial investigation practice.

Therefore, the study of procedural regulation of presentation for recognition at the preliminary investigation stage provided for in the current CPC of the Republic of Uzbekistan in comparison with the CPC of the Uzbek SSR of 1959 allows to note some general and special cases.

First of all, the legislator did not place identification testimony in the same chapter as before and the investigation of the crime scene, but divided them into separate chapters and thus emphasized the independence of these investigative actions.

Secondly, the grounds of presentation for recognition are separated into a separate article and clearly defined.

However, the CPC of the Uzbek SSR of 1959 did not specify the grounds for conducting this investigation.

References:

1. Annotated dictionary of the Uzbek language — letter T [Electronic source] // URL: http://n.ziyouz.com/books/uzbek_tilining_izohli_lugati/Uzbek%20tilining%20izohli%20lug'ati%20-%20T.pdf (referenced time: 22.12.2019).
2. Murodov B.B., Dostmurodov U.I. Emergence and stages of development of the grounds for closing the criminal case // Newsletter of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. – 2017. – No. 4. – B. 25-26.
3. "Vandidod" in the Uzbek translation of "Avesta". See: Avesta. Historical and literary monument. Translation of Askad Mahkam. - Tashkent: "Sharq", 2001. - p. 106; Rahmonov A. Human rights in Sharia // Huhug-Pravo-Law. - T., 1999. - No. 3. - B. 79.
4. Rakhmanov R.I. "Avesta" is a great historical and legal source // Problemy sovremennoy nauki i obrazovaniya. 2013. – No. 2 (16). S. 132-133.
5. Mominov M.E. Procedural formation of formalization of evidence in criminal proceedings (historical aspect) // Bulletin of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. – 2010. – No. 4. – B. 77.
6. Odilkoriev H.T., Azizov N.P., Madirimov H.R. History of state and law: a textbook for MIA higher education institutions. - T.: Ministry of Internal Affairs Academy of the Republic of Uzbekistan, 2013. - p. 24.
7. See: Iskhakov S.A. Muslim Law: Textbook for MIA Higher Education Institutions. - T.: Ministry of Internal Affairs Academy of the Republic of Uzbekistan, 2012. - pp. 41-51.

8. Odilkoriev H.T., Azizov N.P., Madirimov H.R. History of state and law: a textbook for MIA higher education institutions. - T.: Ministry of Internal Affairs Academy of the Republic of Uzbekistan, 2013. - p. 119.
9. Bakirov F. Court, sharia and custom in Tsarist Turkestan. - T., 1967. - B. 30.
10. Muqimov Z. History of the state and law of Uzbekistan. Textbook for students of higher educational institutions. - T.: "Adolat", 2003. - B. 97, 137.

