



SPECIFIC FEATURES OF CONDUCTING PRE- INVESTIGATIVE ACTIONS ON THE CRIME OF ARBITRARINESS

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Abstract

This article highlights aspects that officials should pay attention to during pre-investigation checks on crimes of arbitrariness. In particular, it addresses the similarities and differences between the crime of arbitrariness and crimes of embezzlement, abuse of office, and forgery of documents. The conceptual algorithm of actions that must be carried out during the pre-investigation check on the crime of arbitrariness is outlined.

Keywords: law, state power, criminal law, criminal punishment, subjects of arbitrariness, victim.

From the moment applications and reports of crimes are received by the duty unit of the district Department of Internal Affairs, the consideration and legal resolution of these appeals fall under the official duties of responsible employees of the internal affairs bodies. Such cases are regulated by the Criminal Procedure Code of the Republic of Uzbekistan and are referred to as pre-investigation verification actions.

The primary stage of pre-trial proceedings in a case of arbitrariness is a pre-investigation check, during which an official of the body conducting the pre-investigation check, an investigator, or an inquiry officer establishes the presence of grounds and reasons for initiating a criminal case and makes legal decisions.

In accordance with the legislation, bodies and their officials carrying out pre-investigation checks include:

1) internal affairs bodies (prevention inspector, operational search officers, probation service employees, inquiry officer, investigator, employees of migration and citizenship registration departments, etc.);

2) commanders of military units, formations, heads of military institutions and military educational institutions - in cases of crimes committed by subordinate servicemen, as well as by reservists during training exercises; in cases of crimes related to the performance of official duties by members of the Armed Forces of the Republic of Uzbekistan or crimes committed at the location of a unit, formation, institution, or educational institution[1];

3) on cases transferred by law to the jurisdiction of the state security service bodies;

4) heads of the bodies managing the penal system 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 on the territory of these institutions;

5) state fire supervision bodies - in cases of violation of fire and fire safety regulations;

6) border protection bodies - in cases of violation of the state border;

7) captains of sea vessels on long voyages;

8) bodies of the state customs service - in cases of violation of customs legislation;

9) the Department for Combating Economic Crimes under the General Prosecutor's Office of the Republic of Uzbekistan and its subdivisions on the ground - in cases of violation of budget, tax, and currency legislation, as well as in cases of crimes related to the use of electricity, heat energy, gas, and water supply;

10) Bureau of Enforcement under the Prosecutor General's Office of the Republic of Uzbekistan and its subdivisions on the ground - in cases of evasion of material support for minors or incapacitated persons, parents, failure to execute a court decision, interference in the process of compulsory execution of court decisions and acts of other bodies, illegal disposal of seized property;

11) The Main Department for the Prevention of Offenses in the Sphere of Retail Trade and Services of the State Tax Committee of the Republic of Uzbekistan and its territorial subdivisions - in cases of offenses in the financial, economic, and tax spheres identified on the territories of markets, shopping malls, and adjacent temporary storage areas for vehicles.

12) the National Guard of the Republic of Uzbekistan and its subdivisions on the ground - in cases transferred by law to their proceedings.

13) The State Security Service of the President of the Republic of Uzbekistan - for cases within its purview[2]

Based on the content of Article 3201 of the Criminal Procedure Code of the Republic of Uzbekistan, pre-investigation verification is a new stage of pre-trial proceedings, where pre-trial proceedings begin from the moment of receipt of applications, reports, and other information related to the crime and include pre-investigation verification and investigation of the criminal case.

The concept of "pre-investigation check" was introduced as a new criminal procedural concept with the adoption of the Law of the Republic of Uzbekistan dated September 6, 2017 No. ZRU-442 "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Improvement of the Inquiry Institute." It is by this law that pre-trial proceedings are divided into three stages: pre-investigation check, inquiry, and preliminary investigation.

Currently, there are various views on the concept of pre-investigation verification in legal literature. In particular, according to legal scholar D.M. Mirazov, pre-investigation verification is the primary stage of criminal proceedings, during which applications, reports, and other information about crimes are examined, and the issue of initiating or not initiating criminal proceedings is decided. At this stage, the process of implementing the protection of the legitimate interests of citizens affected by the criminal act begins[3].

According to D. Kenjaboev, pre-investigation verification includes measures to verify applications, reports, and other information related to crimes, to make a decision based on the results of their consideration, as well as measures to consolidate and preserve traces of crimes, objects, and evidence relevant to the case[4].

Another scholar, B.T. Bezlepkin, emphasized that at the stage of initiating a criminal case, verification of the presence or absence of a legal basis or reason should be carried out by requesting written materials and explanations, by appointing a documentary examination or audit, and proposed to call this process a pre-investigation check[5].

M.D. Botaev, however, concludes that, although the above-mentioned opinions reflect the processes related to the structural organization of the pre-investigation stage, these opinions do not fully reveal the concept of the essence of pre-investigation checks today, and in this regard, he emphasized that pre-investigation checks are a separate stage of pre-trial proceedings. In his opinion, pre-investigation verification is a separate stage of pre-trial proceedings, which is a system of procedural actions of responsible state bodies and officials with appropriate powers, aimed at issuing a lawful and reasoned decision by collecting, examining, and evaluating evidence on applications, reports, and other information related to a crime[6].

Here, in our view, the scholar refers to the system of procedural actions aimed at issuing a "decision" as the final decision made by an official of a state body conducting a pre-investigation check as a result of reviewing applications and reports related to the crime. However, the phrase "decision" seems somewhat controversial to us. After all, in legal literature, it is established that a decision is a document issued by courts in civil and economic cases.

From this point of view, we do not refute the opinion of M.D. Botaev and, in our opinion, agree with him, pre-investigation verification is a separate stage of pre-trial proceedings, a system of procedural actions of officials of responsible state bodies, having appropriate powers, aimed at issuing a lawful and reasoned decision by collecting, verifying, and evaluating evidence on applications, reports, and other information related to a crime. Because officials conduct pre-investigation checks and make decisions within the established timeframe.

Also, the purpose of conducting a pre-investigation check, according to Article 85 of the Criminal Procedure Code, is the collection, examination, and evaluation of evidence in order to establish the truth about the circumstances relevant to proving, the lawful, reasonable, and fair resolution of the case[7].

Unlike other types of crimes, the stage of pre-investigation verification of a crime of arbitrariness is extremely important, and it is at this stage that the object of the crime specified in Article 82 of the Criminal Procedure Code, the nature and amount of damage caused by the crime, the circumstances characterizing the personality of the victim, the time, place, method of the crime committed, as well as the causal link between the act and the socially dangerous consequences that occurred, whether the crime was committed by this person, whether the crime was committed with direct or indirect intent or as a result of negligence or self-confidence, the causes and purposes of the crime, as well as other evidence related to the case and all circumstances subject to proof are established, and based on the results, one of the decisions is made to initiate a criminal case, refuse to initiate a criminal case, or send it according to jurisdiction.

Consequently, the success of establishing the circumstances of the crime, as well as the search for, identification, and seizure of its traces for investigation and disclosure, largely depends on the effectiveness of the activities of the official conducting the pre-investigation check, the investigator, and the inquiry officer in the process of verifying statements and reports about committed acts of arbitrariness. As the Russian researcher S.A. Novikov noted, it is precisely at the pre-investigation verification stage that the chances of identifying significant circumstances of the committed crime are high[8].

Analysis of the practice of conducting pre-investigation checks on crimes of arbitrariness shows that it is necessary to pay special attention to some circumstances. We can see them in:

Firstly, the analysis of materials of pre-investigation checks and criminal cases under the jurisdiction of internal affairs bodies, although the first paragraph of clause 54 of the order of the Ministry of Internal Affairs of the Republic of Uzbekistan dated June 12, 2017 No. 100 "On Approving the Instruction on the Procedure for Organizing Inquiry and Preliminary Investigation in the Internal Affairs Bodies of the Republic of Uzbekistan" indicates that, based on the requirements of the law, a pre-investigation check is carried out on reports of crimes registered in the book "Form 1" and the journal "Form 2" of the duty unit of internal affairs bodies and received from other law enforcement agencies, pre-investigation checks are carried out on reports of crimes sent by written instruction from investigative units to crime prevention departments, criminal investigation units and other sectoral services of internal affairs bodies, and the results are reported to the investigative units. Nevertheless, in law enforcement practice, in 90% of cases, pre-investigation checks on complaints and reports related to arbitrariness are carried out by prevention inspectors.

The majority of prevention inspectors lack a legal specialty and sufficient knowledge, qualifications, or skills. For various reasons, they may be reluctant to register crimes committed in their service area, desire to achieve positive performance indicators, or follow superiors' instructions. Consequently, pre-investigation checks on arbitrary crimes are not conducted thoroughly, impartially, and comprehensively. Relevant documents are poorly prepared without adhering to procedural norms (for example, explanatory letters are drafted without following established procedural orders, without warnings under Article 240 of the Criminal Code, or with unjustified warnings under Article 238, without specifying who obtained the explanation, without clarifying which alphabet the person giving the explanation can read, etc.). As a result, circumstances that need to be proven are not established, evidence is not collected and examined in a timely manner, the truth is not determined, and the principle of inevitable responsibility is not ensured. In many cases, prevention inspectors exceed the 10-day period specified in the first part of Article 329 of the Criminal Procedure Code without valid reasons, and local prosecutors unreasonably extend the pre-investigation verification period for up to one month using inappropriate clauses from Part 3 of Article 329 of the Criminal Procedure Code[10].

In some districts and cities, although extending the term falls under the authority of local supervisory prosecutors according to the Criminal Procedure Code, district and city Internal Affairs Department heads are allowed to extend it. Often, the late submission of materials to the investigative body leads to confusion for investigators and inquiry officers, making it difficult to establish the truth. This hinders the issuance of lawful, fair, and well-founded decisions, resulting in significant time expenditure.

Furthermore, while inspecting the crime scene in cases of arbitrary crime is the most crucial investigative action for determining when, where, and under what circumstances the crime occurred, prevention inspectors frequently fail to conduct such inspections. However, the information obtained during this investigative action plays a vital role in legally assessing the person's actions and discovering witnesses and other material evidence related to the case[11].

In our opinion, considering paragraph 7 of the Decree of the President of the Republic of Uzbekistan dated November 29, 2021 No. UP-27 "On Approving the Concept of Public Security of the Republic of Uzbekistan and Measures for its Implementation"[12], which stipulates that from September 1, 2024, only employees with higher legal education will be appointed as senior prevention inspectors in Tashkent's internal affairs bodies, and from September 1, 2025, in the remaining territorial internal affairs bodies, and taking into account the increasing number of arbitrary crimes and the large volume of criminal cases under investigators' and inquiry officers' jurisdiction, it would be advisable for pre-investigation check officials to conduct pre-investigation checks in cases where the person who committed the arbitrary crime is known and there are no problematic issues in legally assessing the act. This is based on the fact that the official conducting the pre-investigation check also has the authority to initiate a criminal case.

If the identity of the person who committed the crime of arbitrariness is unknown, or if there are circumstances that cause disputes in the qualification of the act, or if the signs of the crime are clearly visible, the pre-investigation check should be carried out only by investigative bodies. Taking the above into account, the third paragraph of clause 54 of the order of the Ministry of Internal Affairs of the Republic of Uzbekistan dated June 12, 2017 No. 100 "On Approval of the Instruction on the Procedure for Organizing inquiry and Preliminary Investigation in the Internal Affairs Bodies of the Republic of Uzbekistan" should be stated in the following wording:

"conduction by investigators and inquiry officers of investigative units of pre-investigation verification actions and adoption of a lawful decision on reports of crimes related to rape, unnatural satisfaction of sexual needs by force, extortion, petty theft, fraud, violation of labor protection rules, hooliganism, as well as the infliction of bodily harm with obvious signs of a crime, the commission of which has not been established by the person who committed the socially dangerous act, causing disputes in the qualification of the act."

Secondly, the presence of conflicts in some norms of the current Criminal Procedure Code also leads to many errors and shortcomings in the conduct of pre-investigation checks. In particular, although Article 321 of the current Criminal Procedure Code indicates that an investigator, inquiry officer, prosecutor, and an official of the body conducting a pre-investigation check are obliged to initiate a criminal case within their competence in all cases where there are reasons and sufficient grounds for the commission of a crime, this normative basis, that is, that an official of the body conducting a pre-investigation check can also initiate a criminal case within their competence, is not indicated in Article 15 of this Code, entitled "Incurableness of Initiating a Criminal Case." However, Article 392 of this Code states that the heads of each of the bodies listed in Article 391 of this Code, acting as the head of the body carrying out the pre-investigation check, have the right to initiate a pre-investigation check or entrust its conduct to another subordinate official, to initiate a criminal case or refuse to initiate a case, or to transfer the application, notification according to jurisdiction.

As is known, the principles of the Criminal Procedure Code are the fundamental basis for all other norms. More specifically, the remaining norms of the Criminal Procedure Code must not contradict the principles. However, although Article 321 of the Criminal Procedure Code indicates that an official of the body conducting the pre-investigation check is authorized to initiate criminal proceedings, it is not mentioned in Article 15. Article 392 states that only the head of the body conducting the pre-investigation check has the right to initiate criminal

proceedings. It is these factors that cause a number of contradictions in the conduct of pre-trial investigations.

In our opinion, in the content of Article 15 of the Criminal Procedure Code, it is necessary to include an official of the body carrying out the pre-investigation check among the bodies obliged to initiate criminal proceedings. This necessitates the inclusion of the following word in Article 15 of the Criminal Procedure Code: "Prosecutor, investigator, inquiry officer and official of the body carrying out the pre-investigation check..." then the text continues.

Because today's practice shows that prevention inspectors are making decisions to refuse to initiate criminal cases and to send applications and reports according to their jurisdiction. It is illogical not to grant the authority to initiate criminal proceedings.

Thirdly, the timely and complete conduct of an inspection of the crime scene plays an important role in identifying traces of the crime and other evidence relevant to the case. However, as a result of the analysis of pre-investigation verification materials, the conduct of pre-investigation verification actions by prevention inspectors, and in some cases by operational officers, on applications, reports, and other information related to arbitrary actions in law enforcement practice, most of them do not have higher legal education, and due to insufficient knowledge, qualifications, or skills, the scene of the incident is not inspected. However, an inspection of the crime scene reveals the true circumstances of the case. It also serves to find traces of a crime, physical evidence, clarify the circumstances of the incident, identify witnesses, and other circumstances relevant to the case[13]. Unfortunately, after ten days or a month, an inspection of the scene of the incident within the framework of this case leads to the fact that most of the above-mentioned evidence remains undetermined.

Taking the above into account, in order to prevent such errors and shortcomings by prevention inspectors and operational officers in the future, we consider it expedient to develop training manuals for each type of crime separately for use in the crime scene inspection service, as well as to introduce a system of training them at workplaces every Saturday during educational hours. In addition, we propose to pay special attention to the following when inspecting the scene of the incident:

before arriving at the scene of the incident: receive information about the person who filed the complaint or reported the act of arbitrariness (presence of a criminal record, profession, activity in the mahalla, etc.), as well as details of the incident, the place and time of the crime, whether the person who committed the crime has been identified, whether he has been detained or not, where he has been detained if he has been detained, information about the victim, measures taken to provide emergency medical care to persons in need of medical care, the address of the victim, if he is placed in a medical institution;

Preliminary organizational actions carried out at the scene of the incident: making sure that the condition of objects and items at the scene of the incident has not changed or that they have not been touched; covering traces at the scene of the incident - hands, feet, transport, blood, etc. - with something (boxes, cardboard, plywood, tarpaulin, etc.) in a way that does not cause damage, if they may change under the influence of weather; taking measures to transfer damaged objects or traces of crimes (blood, hair, parts of clothing) to another place where their original condition can be preserved (by means of photography, video recording, and other methods), if it is impossible to preserve them in their original state; taking measures to preserve and transfer, in the prescribed manner, objects not related to the incident or whose owners are unknown at the scene of the incident;

taking measures to locate the person who committed the crime by determining what operational-search measures should be carried out immediately during the inspection of the scene of the incident, giving specific instructions to the relevant employees, resolving the issue of using a service dog, etc.

Taking into account all the foregoing, we have developed the following conceptual algorithm for conducting a pre-investigation check on reports of an unauthorized crime:

- 1) acceptance and registration of an application, report on a crime;
- 2) to gather an investigative-operational group and go to the scene of the incident;
- 3) to obtain detailed explanations from the person who reported the crime, as well as from other participants in the event and witnesses;
- 4) inspection of the scene (identification, identification, and seizure of traces);
- 5) appoint specific (forensic medical, handwriting, commodity science, soil science, appraisal, etc.) examinations based on the circumstances of the case;
- 6) receive detailed explanations about the crime from the victim or accept an oral statement;
- 7) identification and systematization of information about the identity of the victim and the person who committed the crime;
- 8) determination of the relationship between the person who committed the crime and the victim (property, love, mutual disagreement, etc.);
- 9) making a decision to initiate a criminal case or to refuse to initiate a case, or to send an application or a report as it relates to the investigation.

In conclusion, it should be noted that the reflection of the above-mentioned proposals in our current legislation serves to eliminate existing conflict situations and misunderstandings arising in investigative activities.

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