

# Specific Aspects of Preliminary Investigation in Certain Foreign Countries

**Abdurazzakov Sadiqjon Husan Ogli**

Senior investigator of the Investigative Department of the Uchtepa District IIO FMB

**Abstract:** The article analyzes the features of ensuring legality at the initial stage of the investigation, as well as offers suggestions for improving the mechanism of ensuring legality in the activity of the investigator.

**Key words:** Investigation, law, freedom, court, society, justice, preliminary investigation.

## Introduction

In all countries of our time, it is necessary to reliably protect the rights, freedoms and legal interests of a person, to respect his honor, dignity, and reputation, to solve crimes quickly and fully, to compensate the damage caused to the victims of crime, to expose the guilty and not to bring the innocent people to justice. Ensuring, timely and effective registration of appeals of individuals and legal entities regarding crimes and solving them in accordance with the procedure established by law, with the use of torture and other cruel, inhuman or degrading treatment and punishments against the person during investigation, investigation and preliminary investigation procedures it is becoming a vital necessity to introduce effective mechanisms to prevent the commission of related acts and to introduce international standards and advanced foreign experience in these processes.

Ensuring the rights of certain participants of the process who do not have their own legal status in criminal procedural relations in the international community and legally guaranteeing them, improving the provision of the rights and freedoms of officials responsible for conducting criminal proceedings, eliminating gaps in the legislation based on the results of the application of criminal procedural law norms to practical activities, authorized The presence of complex procedures in the processes of citizens' appeals to the bodies, the elimination of the practice of excessive sensitivity and indifference to the appeals in these processes, ensuring openness and transparency in the activities of the responsible bodies that carry out the stages of bringing the case to court, the actual issues that arise in the interaction between authorized officials and the participants of the process there is a need to study the problems in a systematic and critical analytical way and to find their scientific-theoretical and practical solutions.

In recent years, in our country, in the activity of investigating crimes, especially at the stages of bringing the case to court, it is necessary to fully realize the rights and freedoms of the participants in the process and create legal guarantees for their implementation, to manifest the principles of "Inevitability of Punishment for Crime", "Presumption of Innocence", "Finding the Truth" in real life. in order to ensure a legal, reasonable and fair resolution of the case, as well as to uncover the "hot trail" of crimes, to quickly identify the real culprits in the criminal case in accordance with the law, and to assign them fair punishment measures, comprehensive and effective reforms are being implemented.

Most of the research works refer to the experience of foreign countries and pay attention to the issues of identifying the innovations formed as a result of the reform stage of developed countries and implementing them into our national legislation.

In this part of the research work, the criminal procedural norms of some foreign countries are analyzed in general, and the activities of the Federal Republic of Germany in this field are analyzed in detail, and initiatives to reform the existing norms are put forward.

As you know, in this regard, it is important to analyze the legal system first. Because the structure of the law enforcement bodies responsible for conducting the criminal proceedings in the legal system affects the applicable legal norms and also means the mutual differentiation of certain procedures during the proceedings. For example, in the United States of America, which belongs to the Anglo-Saxon legal system, there is no institution of investigation or inquiry prior to investigation. However, the concepts of pre-trial proceedings

and preliminary investigation, which are similar to the institution of inquiry in our national legislation, are used.

It should be noted that in the conditions of development of a democratic legal state and further reform of the judicial system in Uzbekistan, strict observance of legality and the rights of citizens is of particular importance. This also applies to the criminal proceedings, and the order of proceedings in criminal cases established in the criminal-procedural legislation should help to strengthen the legality.

In our opinion, the pre-trial process of criminal cases can be divided into five stages:

1. The stage of crime detection is understood as a set of actions consisting of receiving and registering an application or report about a crime.

2. The stage of initiating a criminal case is the actions of conducting an investigation before an investigation in accordance with the procedure established by the Criminal Procedure Code. This is the first about the crime it is understood that the materials are studied immediately or within 10 days at the latest, it is determined whether or not there are signs of a crime in this material, and if there are signs of a crime in the application and report of a crime, the investigator (inquirer) makes a decision to initiate a criminal case.

3. The stage of carrying out urgent investigative actions - after the initiation of a criminal case, depending on the type of crime, it should be understood to carry out any of the investigative and procedural actions specified in Section 3 of the Criminal Code and to collect evidence related to the details of the crime.

Identification of the suspect - on the basis of the results of the procedural and investigative actions carried out in the manner specified in the JPK, as well as on the basis of the materials of the operational and search activities, to determine the person suspected of committing a crime, to determine his whereabouts, to arrest him, if necessary, to involve him in the case as a suspect. includes the actions of issuing, announcing the suspect to the person and questioning.

5. Involving a person to participate in the case as an accused is the investigative actions carried out with the suspect in the criminal case - search and seizure of his place of residence (work, study), interception of mail and telegraph messages, checking his testimony at the scene of the incident, confronting him and other actions are the actions of accusing a person on the basis of the evidence found in the process, interrogating him, choosing a precautionary measure against him, and drawing up an indictment in a criminal case.

In order to ensure legality in the process of investigating crimes, it is desirable to pay attention to the following: - to achieve the reception and registration of all applications and reports about the crime; - to ensure that the investigation-emergency team reaches the place of the incident as quickly as possible and to involve all the necessary forces and means without delay; - to ensure the high-quality and effective conduct of the pre-investigation investigation, to carry out investigative actions before the initiation of a criminal case within the framework of the requirements of legality, and to determine the rapid-search activities, observing their speed and continuity, making wide use of the capabilities of all members of the investigative-rapid team to perform the above tasks; - quick adoption of decisions on initiation of criminal case and preliminary investigation; - to collect and record as much information as possible with less time, to use technical means, to quickly transfer information to cooperating bodies, - to use the help of specialists and experts in all ways when it is necessary to verify certain information and messages.

For this, it is necessary to do the following

a) to ensure that the investigative team arrives at the scene of the incident and that the technical means are always ready to work with traces and other evidence;

b) to ensure the possibility of attracting experts required by the situation to the investigation team at any time, to ensure that the information about these experts is in the duty parts of internal affairs;

c) providing the investigation-emergency team that went to the scene of the incident with exemplary algorithms for conducting urgent investigative actions and rapid-search activities designed for relevant situations;

g) it is necessary to ensure the operation of a well-developed system of security measures until the arrival of the investigative team at the scene of the incident.

Taking into account the specificity of the criminal-procedural activity, which allows limiting the rights, freedoms and legal interests of the participants in the criminal process, to implement the full protection of the rights of the individual at the preliminary investigation stage, to ensure unconditional compliance with this by

the competent authorities, as well as to expand the powers of the court at this stage. Improving the institution of habeas corpus" has a special place.

These rules are reflected in the principles of legality, the implementation of justice on the basis of the equality of citizens before the law and the court, respect for the honor and dignity of the person, protection of the rights and freedoms of citizens, and the right to appeal against procedural actions and decisions.

The whole crime, which consists of successive stages, the goals and tasks of which are defined in the Code of Criminal Procedure, is considered general for judicial proceedings.

However, there is a risk of non-compliance with the requirements of these principles in the criminal process, which lies at the root of the systematic flaws in the preliminary investigation.

The legal nature of systemic deficiencies requires the need for systematic control over the conduct of preliminary investigations in criminal proceedings. At this stage, the objectives and tasks of the prosecutor, the court and the public control arising from the general principles of conducting criminal proceedings indicate the importance of this institution.

In the general sense, every mistake is wrong, noan is interpreted as a mistake, a mistake, a wrong idea, a wrong or wrong step, a wrong action or omission, etc.

Errors in the criminal process can occur in the process of making procedural decisions and performing procedural actions. Errors in mental activity can also occur in the evaluation of evidence collected in the case. But such mistakes are not objectively expressed in the decisions made and issued in the criminal case.

"In the scientific literature and criminal justice practice, many terms are used to describe preliminary investigation errors: "initial investigation deficiencies", "initial investigation deficiencies", "investigative errors", "violation of the law", "violation of the rule of law", including "serious violations ", "criminal procedural violations", "rules of law", "consequences of procedural errors", "misunderstandings of the investigator" and others".

Scientists of the Scientific Research Institute of the General Prosecutor's Office of the Russian Federation defined the term "Investigative errors" as follows: "Investigative errors are prosecution and arrest through illegal and unreasonable actions, illegal suspension and termination of the case, transfer to the prosecutor with an indictment, cases to court is to send."

According to the Russian scientist A.D. Boykov, "any illegal or unreasonable decision caused by wrong actions or inaction should be understood as an investigative error."

There is no doubt that not all concepts can be considered complete and unanimous.

The content of the above-mentioned terms reflects a wide range, and the fact that the research is not carried out in a compact framework creates problems in the meaningful sequence of the work, in delivering a simple and understandable idea to the user.

Therefore, we consider "systematic flaws in the original investigation" in relation to research problems.

During the initial investigation, investigators may commit various systematic errors: violation of material and procedural law norms, misinterpretation, non-compliance with tactical and technical recommendations of criminalistics.

Non-observance of constitutional rights and freedoms in the criminal proceedings is the main part of the systematic deficiencies in the investigation. Due to the specific nature of errors of this type, although their weight is 7.4%, their importance cannot be ignored.

The results of the studied research showed that a single concept of "systematic deficiency" in the criminal process and the exact number of its signs have not been defined. Often, it is determined by the lack of investigative efforts, incompleteness, or is understood as its result. The definition of investigational deficiencies existing in the literature is distinguished by its general nature, the uncertainty of individual characteristics, which leads to deficiencies in understanding its essence.

At this point, it is worth noting that the shortcomings encountered in the course of several investigations and turning into, so to speak, "false practices" are a worrying situation, and require taking necessary measures to prevent them.

Therefore, in this research work, we are thinking about the systemic flaws that are regularly made in the prosecutor's office and how to prevent them.

Because the legal meaning of the term and the concepts formed in jurisprudence allow us to understand the systematic flaws in the investigation. The reason for the shortcomings is expressed in the official's

misunderstanding of a certain situation, wrong assessment of relevant information, and wrong tactical and procedural decisions in the criminal case.

US Federal Criminal Procedure Law is based on the US Constitution, acts of Congress, the Federal Rules of Criminal Procedure for Federal Courts, other rules issued by the US Supreme Court, Federal Courts, Federal Executive Branches, rules of criminal procedure established by the US Supreme Court, and judicial precedents.

There are two types of criminal prosecution in the US criminal justice system:

- 1) conducting cases based on which an indictment document must be drawn up or information provided;
- 2) general management.

One of them is used in cases of dangerous crimes (felony), and the other is used in cases of lesser crimes (misdemeanor).

Proceedings before the court are carried out by about fifty bodies and officials in the USA, and about 20,000 different services related to the detection and investigation of crimes to one degree or another operate in the country.

Inadmissibility of renunciation of the charge at the trial stage (§ 157 JPK GFR). Although this situation is not often observed in our practice, it means that the activity of investigative bodies does not consist only of accusations, the investigation does not involve the determination of the person's guilt, including the committed act.

Including, there are specific aspects in the procedure of criminal proceedings, and it is not appropriate to apply such norms.

In particular, public and private accusations are distinguished in German criminal procedural law (§ 374-394 of the JPK of the Federal Republic of Germany). National law in our country (Article 325 of the Criminal Code) there are criminal cases initiated by the victim's application. However, when the application is filed, investigative actions in the criminal case are carried out by investigative bodies. However, in Germany, private prosecution is carried out by direct appeal to the court. The burden of proof is also on the applicant. The Prosecutor's Office investigates only crimes that harm public interests.

The number of defenders in Germany is also limited. The accused may not have more than 3 defenders (§ 137 JPK GFR). It is desirable not to limit the number of defenders in multi-episode cases.

Jurisprudence teachers of higher educational institutions or lawyers who have completed 1 year and 3 months of training in judicial bodies and passed the first exam can also be selected as defenders (§ 138, 139 of the Criminal Code of the Republic of Kazakhstan). In our opinion, advocacy should be a professional profession. Because the investigative phase involves many processes, education should not interfere with the investigative process.

In Germany, there is an institution of a person assisting the accused (FR JPK § 149). The spouse of the accused or a person of the same sex who is married to him is allowed to be involved as a supporting person in the case. This situation may lead to attempts to distract the investigation.

Specific categories of crimes are defined for which the investigative act of listening to telephone or other communication devices is used. It is envisaged that this investigative action will be applied only to serious crimes, the categories of which are enumerated in various laws. In our opinion, it is not appropriate to set a certain limit of this investigative activity in order to quickly and completely solve crimes (§ 100a JPK GFR). Bail is applied by the court and the minimum amount of the bail is not set (§ 116a JPK GFR). Granting such authority to the court will increase the time spent in the investigation process. Also, this precautionary measure is not considered a case related to the restriction of individual rights. In addition, leaving the bail amount to the discretion of the court allows for subjectivity in the process and creates factors of abuse and corruption.

In Germany, the term of preventive detention is initially set to 6 months (FR JPK § 121). The duration of the term is long and it can be extended up to 1 year by the regional Supreme Court;

The duration of detention, detention or stay in a medical institution is not taken into account in the calculation of procedural periods. If the end of the term falls on a non-working day (holiday, holiday), the term ends on the next working day. However, in cases related to the limitation of personal freedom, a different calculation of time periods was not taken into account (§ 43 JPK GFR).

The state of compliance with rights and obligations by the prisoner is controlled by the court (§ 453b JPK GFR). In this process, as in our national legislation, it is necessary to have the supervision of the prosecutor.

Because the function of control over the execution of laws belongs to the prosecutor's office. It is inappropriate for the court to control how it is executed while carrying out procedural actions related to restricting the freedom of the prisoner.

In the part of the research work called "Systemic problems in personnel training, selection and organization of work", we thought about the small number of educational institutions in the training of legal personnel. The practice of foreign countries shows that a new approach is required in this regard.

For example, in the Federal Republic of Germany, 40 legal educational institutions provide legal education for the legal profession, courts, and prosecutor's offices.

Our current criminal procedural legislation does not provide criteria for evaluating the performance of some officials who participate in the stage of bringing the case to trial. However, it is important to pay attention to the experience of foreign countries in this regard.

The non-existence of the position of assistant investigator in the criminal procedural legislation prevents the reduction of the volume of work. It should be noted that these foreign experimental investigative bodies introduced in the USA, Japan and Kazakhstan have contributed to the improvement of work efficiency.

In many cases, the participants in the process refuse to provide information related to the individual, such as fingerprints, biological samples, personal photographs and the like.

The institution of coercive measures of the criminal procedural legislation does not directly specify the authority and procedure for applying such measures, and this situation causes various misunderstandings.

The German JPK has an institution of procedural coercive measures called "Criminal Registration", which stipulates that if it is necessary to obtain a photo, personal data, biological samples from a participant in a criminal case, if the person refuses to provide them, coercive measures can be applied. .

In conclusion, it can be said that by advancing the above-mentioned recommendations, our legislation of foreign countries and It will be important to analyze the norms that are consistent or inconsistent with our priorities and discuss the issue of implementation, adjusted to our mentality.

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