



MODERN PROBLEMS OF THE INSTITUTION OF REFUSAL TO INITIATE CRIMINAL PROCEEDINGS

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Annotation

This article discusses the results of the analysis of modern problems of the institution of refusal to initiate criminal proceedings. The institution of refusal to initiate criminal proceedings plays an important role in the criminal justice system, since the further fate of the received statement or report of crimes depends on it a lot. Based on the available scientific research on the institution of refusal to initiate criminal proceedings, the author conducts a comparative analysis of the criteria of justified and lawful refusal to initiate criminal proceedings.

Keywords: a statement about a crime, a criminal process, the stage of initiation of a criminal case, institutions of criminal procedural law, refusal to initiate a criminal case, pre-investigation check.

In modern conditions, the national criminal procedure legislation is undergoing a period of rapid reform, predetermined by socio-political changes in the country. The purpose of the ongoing reforms is to create conditions for the effective activity of law enforcement agencies in the fight against crime, strengthening guarantees for the protection of individual rights and freedoms, the interests of society and the state. One of the priority directions in these reforms is designated "ensuring guarantees of reliable protection of citizens' rights and freedoms", the purpose of which is to ensure timely consideration of citizens' appeals, ensuring the inevitability of responsibility for admitting facts of red tape, bureaucracy and indifference to the consideration of appeals, as well as taking all necessary measures to restore violated rights [1]. But despite the ongoing reforms, criminal law statistics in the Republic of Uzbekistan indicate a sharp increase in registered crimes in recent years.

So, in 2021, the number of registered crimes increased by 1.12% compared to 2019-2020 [2]. The study of statistical data and materials of judicial and investigative bodies has shown frequent mistakes when initiating criminal cases and when they are refused, which leads to frequent cancellations of decisions made by officials. We believe that the reason for this is the lack of a unified procedure for registering,





verifying and authorizing received statements about crimes, as well as their regulation through various internal acts. At the same time, there is a lack of clear regulation of procedural activity at the stage of initiation of a criminal case, which generates a different interpretation of individual norms by the law enforcement officer, thereby preventing the uniform and effective application of legal norms in practice.

Currently, there is still a scientific discussion about the essence of "refusal to initiate criminal proceedings". In the legal doctrine of the SCP, there is a position according to which "refusal to initiate criminal proceedings" is recognized as a sub-institution within the institution of initiation of criminal proceedings [3]. And others, on the contrary, put forward a position on the independence of this institution from the initiation of criminal proceedings [4].

To determine the institutionality of the "refusal to initiate a criminal case", an analysis of the legal norms regulating the legal relations arising when making a decision to refuse to initiate a criminal case was carried out. In addition, an attempt was made to determine the subject of the institution of refusal to initiate criminal proceedings. Thus, the refusal to initiate a criminal case has all the elements of a criminal procedural institution. The "Refusal to initiate a criminal case" combines the norms regulating the legal relations arising during the pre-investigation check, there is a procedural document (resolution), as well as participants (prosecutor, investigator, inquirer and the person carrying out the pre-investigation check).

A certain originality of the institution under study is expressed in its constituent element of the institution of criminal proceedings, but on the other hand, together they create a certain mechanism of the branch of the criminal process. So, when checking reports and statements about crimes, one of the procedural decisions should be taken. The decision to initiate a criminal case is made if there are reasons and grounds (signs of crimes), and the refusal to initiate is made due to the absence of such.

Therefore, the decision to refuse to initiate a criminal case, acting as a separate legal institution, serves to implement some tasks, such as preventing the unjustified initiation of a criminal case with unjustified criminal prosecution.

In the CPC of the Republic of Uzbekistan, the refusal to initiate a criminal case is regulated by the norms of article 333 of the CPC. In this article, the grounds for making a decision to refuse to initiate a criminal case are the circumstances specified in paragraphs 1, 2 of Article 83 of the CPC and paragraphs 1, 3 – 8 of Article 84 of the CPC. However, the content of paragraph 1 of Article 83 of the CPC causes great dissonance, since it is allowed to make a decision to refuse to initiate a criminal case



in the absence of a crime event, in connection with which a criminal case is initiated, an investigation or a trial is conducted.

This provision indicates a certain conflict of the norms of the CPC, which makes it necessary to eliminate it. To eliminate such a conflict, we consider it expedient to supplement the content of paragraph 1 of Article 83 and state it in the following wording: "1) there is no crime event about which a pre-investigation check was carried out".

As we know, the criminal process determines the procedure for making and processing a decision to refuse to initiate a criminal case. According to the provision of Article 330 of the CPC, one of the following decisions is made based on the results of checking the received application or report on a crime: on the initiation of a criminal case, on the refusal to initiate a criminal case, on the transfer of an application or report on investigation.

Before a criminal case is initiated, it is necessary to accept and register a statement or a report on a crime. The bodies of preliminary investigation, inquiry and carrying out pre-investigation verification undertake to receive and register any message or statement about crimes. Procedural decisions are made within the established time limits specified in Article 329 of the Criminal Procedure Code of the Republic of Uzbekistan.

Having studied the norms of the CPC on the procedure for considering an application or a report on a crime, it is indicated that the statements should contain information (albeit to a small extent) about the crime committed or being prepared. In the absence of data in the appeal indicating signs of a crime, the competent law enforcement agency should proceed from the provisions of Article 334 of the CPC. In this case, the Joint Order of the Prosecutor General's Office and the Ministry of Internal Affairs of the Republic of Uzbekistan "On approval of the rules for registration in a simplified manner of decisions on refusal to initiate criminal proceedings taken following the results of a pre-investigation check, statements, messages and other information about a crime received by the police department on duty" adopted on February 1, 2021, according to which the procedure for simplified production and decision-making on refusal to initiate criminal proceedings. This order provides a solution to the above-mentioned issue (registration of messages and statements that do not contain data on the commission of crimes). In particular, upon receipt of applications or appeals to the duty part of the internal affairs bodies, they are registered automatically in the "E-material" database, as a result, a pre-investigation check is mandatory. But, in cases where appeals or statements do not contain data on the commission of crimes, the crime prevention inspectors, having considered them,





decide to refuse to initiate criminal proceedings, thereby they can decide to initiate an administrative offense case. This procedure creates favorable conditions for working with appeals and statements of citizens about a crime. In particular, this leads to a decrease in cases of concealment from the registration of reports or statements about crimes, and secondly, a simplified procedure is being created for accepting a refusal to initiate criminal proceedings.

Regarding the legal procedure for conducting proceedings on an oral statement of a crime provided for in Article 324 of the CPC, Part 3 of which states that the applicant must be warned of criminal prosecution under Article 237 of the Criminal Code for false reporting, and a subscription is made to this in the protocol. In addition, according to the provision of Article 324 of the CPC, an oral statement is subject to fixation in the protocol. Next, information about the circumstances of the commission of the crime is recorded in the protocol. As a result, the protocol is subject to signature by the applicant and the official accepting the application.

After the application is processed, a written notification is issued, after which the application (message) is registered in the register of reports on crimes (F-1 book of registration of statements and reports on crimes). After which, a pre-investigation check begins on the received application, which is carried out in order to detect signs of a crime, in the absence of which a decision is made to refuse to initiate a criminal case, which should be based on the results of the verification actions carried out (investigative or other procedural).

The conducted research in the form of a questionnaire among law enforcement officers showed that at the time of receipt and preliminary examination of a message or statement about a crime, in 85% of cases, an official forms an alleged decision to initiate a criminal case. In this case, a quite relevant question arises about the expediency of conducting a pre-investigation check. On this issue, the content of the "Appendix" to the Joint Order of the Prosecutor General's Office and the Ministry of Internal Affairs of the Republic of Uzbekistan dated February 1, 2021, contains a list of offenses, is very interesting. This list allows you to quickly distinguish offenses from crimes. In addition to the formed list, attention is drawn to the deadlines specified in the order regarding inspections and notifications of the results of their supervisors.

In our opinion, every statement and report of crimes should be checked by law enforcement agencies. In addition, the terms specified in this order should be normatively fixed in the CPC, since these terms are procedural terms of criminal proceedings.

When studying the norms providing for the legal content of the decision to refuse to initiate a criminal case, it is possible to determine only the general rules of the





decision, which should reflect the essence of the action itself to verify the message or statement, and the corresponding decision taken based on the results of inspections. In addition, when making a decision, there must be a thorough part, which reflects the evidence confirming the fact that there are no signs of a crime. It is worth noting that the evidence is collected through the production of investigative actions, which are means of proof by their legal nature. For this reason, investigative actions are allowed during pre-investigation checks.

When making a decision to refuse to initiate a criminal case, certain rules should be followed to make a reasoned and lawful decision. Thus, the decision to refuse to initiate a criminal case should reflect reasoned information justifying the conclusion of the official making the decision. Such content of the resolution will allow further checking it for objectivity and validity on the part of the supervising prosecutor. In turn, the resolution must contain the time and place of the decision, the introductory part (the name of the pre-investigation inspection body, surname, title of the official who makes the procedural decision), the descriptive part - the grounds for refusal to initiate proceeding from the provisions of Articles 83, 84 of the CPC of the Republic of Uzbekistan, and the operative part, which will reflect the essence of the decision.

It is important to note that the descriptive part of the resolution has an important significance. But, despite this, very often the descriptive part is filled in briefly by officials. Such a disadvantage makes it impossible to verify the legality of the decision, which further contributes to the appeal, as well as the cancellation of the decision by the supervising prosecutor.

To prevent such situations, it is necessary to adhere to certain rules of drafting a procedural document. We believe that the descriptive part should contain the data collected during the pre-investigation check. It is impossible to allow this part of the resolution to give reasons for the incompleteness of the pre-investigation check, so the actual circumstances of the case should be reflected, since in such cases an extension of the terms of the pre-investigation check is required. It will be correct if the actual circumstances of the case are fixed by the results of investigative actions, since they are aimed at collecting evidence, which indicates the validity of decision-making.

The operative part of the decision to refuse to initiate a criminal case should logically correspond to the information specified in the descriptive part and contain the legal reasoning of the decision. In addition, there should be instructions on sending copies of the resolution to interested persons. In the event that during the inspection it is established that the act is an administrative, disciplinary offense or a violation of moral norms, the person who adopted the decision to refuse to initiate a criminal case





sends a message to the relevant persons for the application of appropriate measures against them.

At the same time, the issue of execution of the decision to refuse to initiate criminal proceedings is also important. Here, the execution of the decision is understood as the implementation of all prescriptions following the issuance of the decision, i.e. notification in writing of all interested persons who have filed a statement or report on a crime; clarification of their procedural rights to appeal this decision through the prosecutor's office; sending a copy of the decision to the prosecutor; return of documents and items requested during the pre-investigation check.

Complaints against decisions to refuse to initiate criminal proceedings are drawn up only on condition that the applicant is informed of all the details of the decision. Also, a copy of the resolution should be sent to all interested parties. This procedure will enable all interested persons to reasonably refute the refusal to initiate criminal proceedings.

In law enforcement practice, there are frequent cases of adoption of a decision on refusal to initiate criminal proceedings, issued by persons conducting a pre-investigation check, does not contain full, substantiated and verified information, in other words, does not contain grounds for making a decision on refusal to initiate criminal proceedings. The absence of specific data in the materials of the pre-investigation check on the exclusion of the possibility of committing a crime makes it difficult for the supervising prosecutor to initiate a criminal case, with the cancellation of the decision to refuse to initiate a criminal case.

The issue of the consequences of making unjustified decisions with a refusal to initiate criminal proceedings is also important, since a full and comprehensive study of the circumstances reflected in the messages or statements, followed by their resolution, is recognized as a direct duty of the official carrying out the pre-investigation check [5].

In most cases, the procedural execution of decisions on refusal to initiate criminal proceedings largely depends on the content of the primary materials. Thus, if there is data on two unrelated criminal facts in a statement or message, the signs of a crime can be established only for one situation. In this case, it is not possible to divide the materials into one message or statement about a crime, in this regard, the results of the verification of an unconfirmed fact should be reflected in the operative part of the resolution. We believe that in such cases it is necessary to combine two solutions and display them in one procedural decision.

In addition, we consider it expedient to combine decisions in one resolution on similar appeals and those received not at the same time, if this is done before the end of the





pre-investigation check. This circumstance should also be provided as circumstances for extending the terms of the pre-investigation check in Part 3 of Article 329 of the Criminal Procedure Code of the Republic of Uzbekistan.

The issue of supervision of this whole procedure is also important. In turn, the Criminal Procedure Law imposes on prosecutors a procedural duty to verify compliance with the established procedure, the timing of the pre-investigation check, to ensure guarantees of the procedural rights of participants in criminal proceedings, in connection with which, they are charged with the duty to identify, eliminate and prevent violations of the law that may be committed in the implementation of accounting, registration, refusal to initiate criminal proceedings. If the facts of violation of the adoption of reasoned procedural decisions are discovered, prosecutors should cancel the decisions with subsequent recognition of its illegality. In cases of detection of deficiencies, it is necessary to return the material for an additional pre-investigation check, the period of which should not exceed the initial period of the pre-investigation check. The establishment of such a procedural order will be able to contribute to ensuring procedural guarantees of individual rights and freedoms at all stages of criminal proceedings.

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