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REFUSAL TO INITIATE CRIMINAL PROCEEDINGS: PROBLEMS OF THEORY AND PRACTICE

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Annotation
This article discusses the results of a comparative analysis of the criminal process of some foreign countries on pre-trial proceedings. Pre-trial investigation includes such forms as inquiry and preliminary investigation. For the purpose of a detailed analysis of this institute, the author has studied normative legal acts aimed at regulating law enforcement practice. Based on the currently available scientific research on the forms of pre-trial investigation, the author conducts a comparative analysis of existing forms and models of pre-trial investigation.

Keywords: criminal process, criminal case, pre-investigation check, inquiry, investigation, criminal procedural norms, initiation of criminal proceedings.

An essential condition for the democratization of society and the establishment of a rule of law is an effective fight against crime, which requires systematic improvement of the forms and methods of work of the preliminary investigation and court bodies.
Inquiry and preliminary investigation as forms of investigation correspond to the purpose of criminal proceedings, are based on the same principles and general conditions of its production, where the results of the investigation in both forms have the same evidentiary value.
A retrospective analysis of the formation of the institute of inquiry allows us to conclude that the inquiry was originally formed to unload the investigative apparatus [1]. The study of the experience of foreign countries in improving the institute of investigation has shown that in order to comply with reasonable deadlines, such new forms of pre-trial proceedings as simplified inquiry are being introduced [2].
The institution of a special simplified procedure of criminal proceedings, with the consent of the accused with the charge brought against him, is a well-known in the world so-called practice of a plea agreement.
For example, Chapter III of Section III "Special proceedings" of the Criminal Procedure Code of the Republic of Moldova is devoted to proceedings under a plea agreement. Thus, in accordance with Article 504, a plea agreement is a transaction between the public prosecutor and the accused or, depending on the circumstances,

the defendant, who agreed to admit his guilt in exchange for a reduction in punishment [3]. In the criminal process of Moldova, from the moment information about the crime is received, criminal prosecution begins without initiating a criminal case. Consequently, it can be concluded that pre-trial proceedings are not divided into forms (Special part, Section 1, Chapter 1 of the Criminal Procedure Code of the Republic of Moldova).

A plea agreement is drawn up in writing with the mandatory participation of a defense lawyer, the accused or the defendant in the case of minor crimes, medium-gravity crimes and serious crimes, while the court is prohibited from taking part in this process. However, the judicial instance undertakes to establish the conclusion of an agreement in accordance with the law and on a voluntary basis, with the establishment of a sufficient evidence base confirming the accusation.

A plea agreement under the Criminal Procedure Code of the Republic of Moldova can be initiated by both the prosecutor and the accused, the defendant, his defense counsel. A plea agreement may be entered into at any time after the indictment before the start of a judicial investigation.

Despite the fact that the institution of a plea agreement was introduced into the national criminal process, nevertheless, the legislator did not consider the introduction of simplified proceedings with the introduction of new forms of pre-trial investigation.

The practice of neighboring countries is also of interest. So, in recent years, in the criminal process of the Republic of Kazakhstan, there has been a step-by-step reintegration of forms of pre-trial proceedings. According to the current CPC of the Republic of Kazakhstan, pre-trial investigation is carried out in the form of an inquiry, preliminary investigation and in a protocol form [4]. Pre-trial investigation in a protocol form is carried out by the criminal prosecution body for criminal offenses. A criminal offense is understood as a culpably committed act (action or inaction) that does not pose a great public danger, caused minor harm or created a threat of harm to an individual, organization, society or the state, for which a penalty is provided in the form of a fine, correctional labor, community service, arrest, expulsion from the Republic of Kazakhstan of a foreigner or stateless persons (art. 10 of the Criminal Code of the Republic of Kazakhstan). Analysis of the norms of the Criminal Procedure Code of the Republic of Kazakhstan allows us to conclude that protocol proceedings are a full-fledged form of pre-trial proceedings in criminal cases, the main purpose of which is to promptly respond to a criminal offense. The protocol includes such elements as the circumstances of the offense committed, its signs, factual data on the basis of which the offense is confirmed, information about the victim and the damage

caused to him. The term of such proceedings is carried out within 10 days and may be extended, if necessary, to clarify the circumstances of the criminal offense, data on the person who committed it, his location for up to 3 days.

The inquiry, as in the Republic of Uzbekistan, is conducted in criminal cases that do not pose a great public danger and are less serious. However, the inquiry also has an accelerated form. It should be noted that an accelerated pre-trial investigation is usually carried out for crimes of small and medium gravity, as well as serious crimes, if the collected evidence establishes the fact of the crime and the person who committed it, a full confession of his guilt, agreement with the amount (amount) of the damage (harm) caused, notifying the suspect and explaining to him the legal consequences of this solutions.

The terms of such an inquiry are determined within fifteen days, where the person conducting the pre-trial investigation establishes the circumstances of the criminal offense committed and collects evidence confirming the suspect's participation in its commission. Regarding the meaning of an inquiry in an abbreviated form, the following is noted in the legal literature: "an abbreviated inquiry is a simplified version of pre-trial proceedings and consists in conducting an inquiry in a relatively short time and in the possibility of optimal limitation of the scope of investigative and procedural actions aimed at establishing the actual circumstances of a criminal case in order to achieve procedural economy" [5]. In fact, according to the experience of Kazakhstan, it can be concluded that the principle of reasonable time limits in the implementation of pre-trial investigation applies in their criminal proceedings. Such proceedings can also be characterized by reducing the cost of resources for criminal proceedings, facilitating citizens' access to justice, ensuring reasonable deadlines, and bringing the moment of punishment closer to the moment of committing a crime [6]. However, in such accelerated proceedings, there is another threat, such as a decrease in the level of guarantees of ensuring the procedural rights of participants.

According to the Code of Criminal Procedure of the Russian Federation, a preliminary investigation is carried out in the form of an inquiry and a preliminary investigation. However, the inquiry itself has an abbreviated form [7]. According to Article 226.1 of the Code of Criminal Procedure of the Russian Federation, an inquiry in an abbreviated form is conducted on the basis of a suspect 's request to conduct an inquiry in an abbreviated form in a criminal case and if the following conditions are present at the same time:

1) a criminal case has been initiated against a specific person on the grounds of one or more crimes;

2) the suspect admits his guilt, the nature and extent of the harm caused by the crime, and also does not dispute the legal assessment of the act given in the resolution on the initiation of a criminal case;
3) there are no circumstances precluding the production of an inquiry in an abbreviated form.

As in the Republic of Kazakhstan, an inquiry in an abbreviated form is conducted within 15 days from the date of the resolution on the conduct of the inquiry. In another, the procedural form of pre-trial investigation has similar characteristics to the national criminal process.

A comparative analysis of the criminal procedure legislation of the Republic of Azerbaijan allows us to conclude that their inquiry has a similar structure to the pre-investigation check in the Republic of Uzbekistan. Thus, an inquiry is carried out on obvious crimes within ten days if urgent investigative actions are necessary, and a preliminary investigation is carried out on serious, especially serious crimes. The inquiry is being completed with the execution of the indictment. According to some process scientists, regarding the improvement of the legal regulation of the inquiry in an abbreviated form, they note "the need to empower the head of the inquiry unit with the authority to approve an indictment, which contributes to strengthening the effectiveness of departmental procedural control over the inquiry in an abbreviated form" [8]. Such an order actually justifies expectations, which can be observed on the example of the criminal process of Uzbekistan.

In conclusion, I would like to note that the reduced forms of pre-trial proceedings in criminal cases, contributes to the optimization of procedural deadlines, reduce the resources involved, and reduce the evidentiary process.

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