



The General Concept of the Institute of Pre-Trial Investigation in Criminal Proceedings and It's Differences From the Inquiry and the Preliminary Investigation

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Annotation: *the article analyzes legal norms related to preliminary inquiry as a form of pretrial proceedings and provides several proposals to eliminate shortcomings observed in law enforcement practice.*

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The concept of pre-liminary investigation is aimed at combating crime, regulated by the Code of Criminal Procedure, prevention or suppression of crime by the bodies conducting the pre-liminary investigation, collecting and storing evidence, arresting suspects in the commission of a crime and searching for hidden suspects, a special form of pre-trial proceedings, consisting of the activities of an urgent investigation and all other actions to ensure compensation for material damage caused by the crime [6 p. 7].

In criminal proceedings, pre-liminary investigation activities are the first stage of criminal proceedings, it is at this initial stage that a criminal case is instituted or a case is dismissed on the grounds that there is no corpus delicti or that the report contains an administrative or other offense other than a criminal offense and that it is referred to the competent authority.

In the pre-liminary investigation, applications and reports of the commission of a crime shall be carefully investigated, examined and given a legal assessment. In the end, a decision is made to initiate criminal proceedings or to refuse to institute criminal proceedings. The legal basis for the pre-liminary investigation is enshrined in Article 320² of the Criminal Procedure Code of the Republic of Uzbekistan. In this article written "Pre-liminary investigation includes measures to verify criminal applications, reports and other information, to make decisions based on the results of their consideration, as well as measures to strengthen and preserve criminal traces, objects and documents that may be relevant to the case" The concept of pre-liminary investigation and the formation of pre-liminary investigation activities as a separate institution in criminal proceedings was strengthened by the Law of the Republic of Uzbekistan dated September 6, 2017 "On amendments and additions to some laws of the Republic of Uzbekistan in connection with the improvement of the inquiry institute". Pre-liminary investigation is a multifaceted

concept, in the process of which the issues of initiating a criminal case and refusing to initiate it are resolved. [156–157 p. 3].

Pre-liminary investigation is also the legal basis for investigative actions aimed at determining whether there is a criminal offense on the collected materials. As stated in the legal literature, the pre-liminary investigation phase is an independent institution of criminal procedure and is recognized. This stage also has its own independent procedural functions, according to the Criminal Procedure Code of the Republic of Uzbekistan, such as whether the report is a crime or not, collecting information about planned or planned crimes and initiating or refusing to prosecute.

As a result of pre-liminary investigation activities, the rights and legitimate interests of citizens, enterprises, institutions, organizations and the state are protected, their rights are protected from criminal encroachment, and measures are taken to recover damages caused to individuals, society and the state.

The pre-liminary investigation activity shall last from the time the criminal applications and reports are received by the bodies authorized to conduct pre-investigation activities, ie from the time the criminal applications and reports are registered in the register until the criminal case is initiated or the criminal case is refused.

Article 331 of the current Code of Criminal Procedure provides for the procedure for instituting criminal proceedings. If there are grounds provided for in Article 322, the decision to institute criminal proceedings shall be made by the inquiry officer, investigator, prosecutor, as well as an official of the body conducting the pre-liminary investigation investigation, however, we can see that this norm contradicts the principle of inevitability of instituting criminal proceedings under Article 15 of the Code of Criminal Procedure, which stipulates that prosecutors, investigators and inquiry officers must, within the scope of their authority, initiate criminal proceedings. An official of the body pre-liminary investigation prior to the investigation was not named as an authorized person.

At this point, it is necessary to focus on the subjects conducting pre-liminary investigation activities. Article 391 of the Code of Criminal Procedure of the Republic of Uzbekistan lists the bodies carrying out pre-liminary investigation activities. “The pre-liminary investigation investigation will be carried out by the following bodies:

- 1) police;
- 2) commanders of military units, formations, heads of military institutions and military educational institutions;
- 3) state security service bodies;
- 4) Heads of penitentiary system management bodies of the Ministry of Internal Affairs of the Republic of Uzbekistan, heads of penal colonies, educational colonies, pre-trial detention centers and prisons;
- 5) state fire control authorities;
- 6) border guard;
- 7) captains of naval vessels on a long voyage;
- 8) state customs service bodies;
- 9) Department for Combating Economic Crimes under the Prosecutor General's Office of the Republic of Uzbekistan and its local branches;
- 10) Bureau of Enforcement under the Prosecutor General's Office of the Republic of Uzbekistan and its local branches;
- 11) Main Department for Prevention of Offenses in the Sphere of Retail Trade and Services of the State Tax Committee of the Republic of Uzbekistan and its territorial divisions;
- 13) National Guard of the Republic of Uzbekistan and its local units;

14) State Security Service of the President of the Republic of Uzbekistan.

Pursuant to Article 320² of the Code of Criminal Procedure, pre-trial investigation activities may be carried out by the inquiry officer, investigator or the prosecutor himself, along with the bodies conducting the pre-investigation investigation. These persons, in accordance with the powers vested in them, shall be engaged in pre-investigation activities and shall make a final decision on pre-liminary investigation activities.

Of the Code of Criminal Procedure of the Republic of Uzbekistan Article 329 stipulates that criminal applications, reports and other information must be registered and resolved immediately, within ten days, if it is necessary to verify the legitimacy and sufficient grounds for instituting criminal proceedings.

This term falls into the category of Criminal Procedure Periods, to which M.X. Kadyrova commented: “Criminal procedural time limits are the time limits specified in the procedural law on the exercise or refusal to exercise the rights and obligations of the participants in the proceedings or established by the persons responsible for the criminal proceedings in accordance with it.” [28 p. 4]. The period of pre-liminary investigation is also a statutory period for a thorough examination of the criminal application and other reports to verify the presence or absence of signs of a crime in the report received.

Time limits in criminal proceedings Prompt and complete disclosure of crimes set forth in Article 2 of the Code of Criminal Procedure, fair punishment for each offender and exposing the perpetrators so that no innocent person is prosecuted or convicted, to ensure the proper implementation of the law. When there are insufficient indications of a crime or the content of the crime is not determined, the initiation of a criminal case shall be refused. The essence of this stage is the activity related to the resolution of procedural issues on the application and notifications received by law enforcement agencies, which include the following issues:

- whether the report of the planned or committed crimes will lead to the initiation of criminal proceedings;
- whether the information received from reports about the crime and its symptoms is based on evidence;
- which article of the Criminal Code of the Republic of Uzbekistan does this crime belong to;
- whether the information obtained is based on evidence;
- whether to inspect the crime scene;
- whether there is a need for an initial inspection, if any
- it is necessary to carry out works (actions);
- whether the body or official has the right to decide on the initiation of a criminal case or whether it should be referred to the investigation;
- are there any cases of resistance to the initiation of criminal proceedings;
- whether there are grounds in the materials of the criminal case to refuse to institute criminal proceedings with the application of administrative and disciplinary measures;
- who should conduct the inquiry and preliminary investigation in the initiation of a criminal case;
- what measures may be taken by the judge to reconcile the petitioner and the private prosecution in the event of a motion to institute criminal proceedings;
- what measures should be taken to prevent and stop crime, to strengthen and preserve the traces of crime [6 p. 5].

Preliminary-investigation activities should be distinguished from inquiries and preliminary investigations in criminal proceedings. This is because in some cases, pre-investigation activities are

included in the initial investigative actions. Below we will talk about the differences between the pre-investigation investigation and the criminal process from the inquiry and the preliminary investigation:

First, a pre-liminary investigation investigation is a set of actions that can be taken without initiating a criminal case. That is, a criminal case will not be initiated during the pre-liminary investigation investigation. Inquiry and preliminary investigative actions cannot be carried out without initiating a criminal case.

Second, information gathered during pre-investigation activities can lead to criminal prosecution. The information gathered during the initial investigation serves as a basis for drawing up an indictment.

Third, the period of pre-liminary investigation investigation may be extended to 10 days under Article 329 of the CPC and up to 1 month in cases where additional investigation is required. According to Article 351 of the Criminal Procedure Code, the term of the preliminary investigation is 3 months. In some cases, it may be extended by the Prosecutor General and his deputies for up to 7 months, taking into account the scope of the criminal case. The period of inquiry is set at 1 month under Article 381⁷ of the Criminal Procedure Code.

Fourth, the legal status of the participants in the pre-investigation investigation was not clearly defined. In the inquiry and preliminary investigation, the legal status of the participants was clearly defined.

Fifth, during the pre-investigation investigation, only investigative actions specified in Part 2 of Article 329 of the Code of Criminal Procedure may be carried out, and it is strictly forbidden to carry out other investigative actions beyond these established investigative actions. During the interrogation and preliminary investigation, all investigative actions specified in the Code of Criminal Procedure may be used, depending on the criminal case.

Sixth, the range of subjects involved in pre-liminary investigation activities is broad, as defined in Article 39¹ of the CPC, while the scope of subjects conducting inquiries and preliminary investigations is limited, and inquiries are carried out by 5 subjects under Article 38 of the CPC. According to Article 344, the preliminary investigation will be carried out by investigators of three entities: the prosecutor's office, the Interior Ministry and the National Security Service.

It should be noted that according to the current Code of Criminal Procedure, the inquiry officer and investigator have the authority to give instructions to the official of the investigative body before the investigation, but there is no norm on how long the official of the investigative body must complete this task. Therefore, it would be expedient to amend the Code of Criminal Procedure in order to eliminate this inconsistency.

The legitimacy of the pre-trial investigation phase in criminal proceedings is inextricably linked to the protection of human rights. The more just the initiation of a criminal case is from the point of view of the human category, the more stable the rule of law will develop. To achieve this, the principle of legality in the criminal process must be consistently ensured [82-85 p. 6].

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