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Prospects For The Institution Of Preliminary Hearing In Uzbekistan

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ABSTRACT

The article discusses the issue of introducing into the national criminal procedural legislation the stage of preparing a criminal case for trial in the form of a preliminary hearing, analyzes the foreign experience of individual countries on this topic, identifies the essence and tasks of this institution, discusses some features of its legal regulation, formulates proposals in for the effective enforcement of this institution.

KEYWORDS

Criminal procedural legislation, the stage of assigning a case to trial, preliminary hearing, elimination of procedural deficiencies.

INTRODUCTION

One of the important directions of the judicial and legal reforms being implemented in Uzbekistan is the improvement of the criminal procedure legislation. The leader of our country outlined priority tasks for reforming the courts, merging courts, introducing the

practice of preliminary hearing in court, proper protection of investors' rights and other issues aimed at reforming the judicial system.

As the President of the Republic of Uzbekistan Sh.M. Mirziyoyev correctly noted in his Address to the Oliy Majlis and the people of Uzbekistan, “Justice is a solid foundation of statehood. The judiciary plays a critical role in ensuring justice and the rule of law.”[1,1]

In the current criminal procedure legislation, the court session begins after the decision on the appointment of a criminal case to trial, which is regulated in the law by an independent chapter. We can say that the preparation for the trial is an intermediate stage between the preliminary investigation and the trial in the criminal process. It is at this stage that it is proposed to introduce a new institution of preliminary hearing in a criminal case.

As the study of the criminal procedural legislation of far and near abroad has shown, the institution of preliminary hearing was based on the English judicial procedure of arraignment (bringing to court). [8] At the stage of preliminary consideration of a criminal case within the jurisdiction of the Crown Court, the court (magistrates), with the participation of the parties, first finds out whether the prosecution has collected the minimum evidence of the accused's guilt, which is necessary to bring the accused to trial. In this case, each of the parties gets acquainted with the evidence collected by the other party. The parties are given time to present additional evidence in support of their position, therefore, at this stage there may be several meetings. If the court has decided that the evidence presented by the prosecution is sufficient to bring the accused to trial, the prosecutor draws up an indictment and submits it to the court for approval. But the

court has the right to terminate the criminal case”.[9]

However, the division of bringing the accused to trial and preparing the case for trial into two procedural forms is not new in the criminal proceedings of our country. According to the Code of Criminal Procedure of the Uzbek SSR, the issues that are now proposed to be resolved through a preliminary hearing were considered in a preparatory session, later in an assignment session of the court, held at the stage of bringing to trial. The new Criminal Procedure Code of the Republic of Uzbekistan (as amended in 1994) (hereinafter referred to as the CPC), adopted after the independence of Uzbekistan, defined the stage of assigning a criminal case to trial as the main stage of criminal proceedings for preparing the consideration of a criminal case on the merits.[2,95]

In this regard, we believe that the previous assignment session at the stage of bringing to trial can be viewed as a prerequisite for the emergence of a preliminary hearing and consider it a kind of prototype of the proposed new procedural institution. When forming it, we should not mechanically transfer the experience of foreign countries, such as Great Britain, the USA, etc., regarding the institution of preliminary hearing, we need to take into account all stages of the development of the criminal procedural legislation of our state regarding the stage of preparing a criminal case for trial.

Many scholars are of the opinion that the stage of preparing a case for trial in the form of a preliminary hearing “... is designed to resolve issues aimed at creating conditions for production in the court of first instance. At

this stage, the issues of preparing the case for a hearing in court are resolved, and a court hearing is scheduled "[3,16]," a preliminary hearing is an alternative form of assigning a case to trial, carried out only by a court in a special procedural order "[4,12]," ... the main task of a preliminary hearing is to ensure judicial proceedings only in those cases in which a preliminary investigation has been carried out with sufficient completeness "[5,154] and for the stage itself -" ... clarification of significant issues, the answer to which will establish the completeness and sufficiency of the collected materials for consideration of the case in the court session ... "[6,206]

It seems to us that at this stage of preparing the case for trial, the court that has studied the criminal case must be given the right to choose: whether to determine the necessary preliminary hearing of the case, or to appoint a criminal case for consideration in the court session. These stages differ significantly from each other both in the procedural form and grounds for their application, and in the nature of the decisions made. But still, "the main task of the preliminary hearing should be recognized as a joint judge with the parties to discuss issues related to the further movement of the criminal case." [7,53]

An important issue of the appointment and conduct of a preliminary hearing is its procedure, which is regulated in different countries in a peculiar way. So, for example, in the Code of Criminal Procedure of the Russian Federation (Article 234), a preliminary hearing is conducted by a judge alone in a closed court session, the criminal procedure legislation of Ukraine and Kazakhstan regulates such an open session. Since the procedural relations

during the preliminary hearing are similar to the analogous relations in the court proceedings, we believe that one should be guided by the constitutional principle of criminal procedure on open trial of criminal cases in the courts, which applies to every court session where the participants in the process are involved. In addition, a closed preliminary hearing contradicts not only the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, but also the Constitution of the Republic of Uzbekistan (Article 113). The Criminal Procedure Code also states that "A closed preliminary hearing is allowed by court ruling in individual cases involving sexual offenses or the protection of state secrets (Article 19).

In many CIS countries, a preliminary hearing is held by a judge alone (RF, Kazakhstan, Belarus) or the procedural law indicates a presiding judge at this stage (Ukraine) [10]. In the United States, a preliminary hearing is conducted by a Grand jury, [11] i.e. court, which will subsequently consider the case on the merits. It seems that the issue of the single-person conduct of the preliminary hearing by the judge is subject to discussion, since after the preliminary hearing by the same judge, the objectivity of the consideration of the criminal case on the merits in the court session should not be violated. It is also advisable to regulate the participation of the same judge during the preliminary hearing and in the court session in Article 76 of the CCP, and it is also necessary to legislatively regulate the procedure for holding the preliminary hearing if there are grounds for challenging the judge.

As we have indicated, the tasks of the preliminary hearing are to prepare the criminal case for trial, while the court has the right to send the criminal case to the prosecutor who approved the indictment or indictment to remove obstacles to its consideration in court. It seems that the grounds for sending a criminal case to the prosecutor may be the following: significant violations of procedural legislation committed during the inquiry or preliminary investigation, the accused was not given the right to familiarize himself with the case materials, during the preliminary hearing, circumstances were revealed for bringing a new charge or bringing a new person to charge, and others, i.e. such grounds that would testify to the impossibility of considering the case on the merits.

These circumstances indicate the need to revise the norms of the Criminal Procedure Code regarding the actions of the court when the grounds for bringing the defendant to criminal liability on a new charge or bringing a new person to justice (Articles 416,417 of the Criminal Procedure Code) are identified, providing an opportunity to resolve these issues during the preliminary hearing. The preliminary hearing stage should serve as a kind of filter for low-quality investigation of criminal cases.

Therefore, it is at this stage that the judge, in addition to eliminating the shortcomings of a procedural nature, admitted during the inquiry and preliminary investigation, if there are grounds specified in Articles 416,417 of the Code of Criminal Procedure, has the right to return the case to the prosecutor.

Based on the results of the preliminary hearing, the judge must issue a ruling, which

must be handed over to the parties and interested participants in the criminal process.

As in India the Criminal Procedure Code has the crystal clear legal aspects about the system of Bail because Law of Bail is as compulsory as the criminal trial but if the accused has been arrested on suspicion ground then he can approach for a Bail.

The provisions regarding the bail and bonds have been specified from section 436 to 450 of the Indian Criminal Procedure Code. These provisions envisaged in the code gives the brief regarding the provisions of the bail.

The basic rules of grant or denial of bail may simply be summarized as:

- a. There are only two kinds of offences bailable and non bailable offences
- b. In case of bailable offences section 436 CRPC it is the right of accused to demand and be granted bail.
- c. The certain basic criteria while exercising his judicial discretion for grant or denial of bail in case of non bailable offences has been laid down in section 437 CrPc in the cases related to non-bailable offences. Some of these criteria include the nature of offence, past criminal records and probability of guilt.
- d. Section 438 CRPC deals with anticipatory bail in cases where there is an apprehension to arrest.

The Police Officer power, to release a person on bail who has been accused of an offence and is in his custody, is categorised under the two heads:

(A)When without any warrant the arrest is made and;

(B)When with the issuance of warrant the arrest is made .

The Power to grant bail by police has been conferred upon them by the virtue of the following sections:

- 1) Sections 42, 43, 56, 59, 169, 170, 436, 437 and Schedule I Column 5 of the Code.
- 2) The powers of police to grant bail under head are controlled by directions endorsed under Section 71 of the Code. It is under Section 81 of the Code however, which empowers the police officer to grant bail when the person arrested or produced before him has been accused of the commission of a bailable offence even when no direction to such effect has been given in the warrant. In case of non-bailable offence the endorsement on the warrant has to be strictly followed. Endorsement on warrant however should be by name.

We believe it is true that all these measures to improve the criminal procedural legislation, including the introduction of the institution of preliminary hearing, will create effective conditions for the prompt consideration of the criminal case on the merits, prompt elimination of significant violations of the criminal procedural law that impede the further movement of the criminal case into the stage legal proceedings, and most importantly, ensuring the rights and freedoms of citizens guaranteed by law.

REFERENCES

1. Newspaper "Narodnoye Slovo"№275-276, 30.12.2021
2. Code of Criminal Procedure of the Uzbek SSR (adopted at the 2nd session of the Supreme Soviet of the Uzbek SSR of the fifth convocation on May 21, 1959).
3. Volodina L.M. Criminal process: Textbook. allowance. - Krasnoyarsk, 2014 .
4. Rakhmanova S.M. "Preliminary hearing as a form of assigning a case to trial" Abstract of a doctoral (DSc) dissertation in legal sciences.T .: 2018.
5. Criminal Procedure: Textbook / ed. V.P. Bozhieva. - M., 2002 ..
6. Scientific and practical commentary to the RF Criminal Procedure Code / ed. V.M. Lebedeva - M., 2012.
7. Ryabinina T.K. A preliminary hearing as a means of ensuring a reasonable time frame for criminal proceedings. "State and law". No. 2, 2013.
8. <https://studbooks.net/1000519/pravo/>
9. <https://studfile.net/>
10. <http://continent-online.com/>
11. <https://studfile.net/>
12. Bazarova D. Principles of criminal procedure in the system of guaranteeing the rights of participants in criminal court proceedings //The American Journal of Social Science and Education Innovations. – 2020. – T. 2. – №. 02. – C. VI-XV.
13. Bazarova D. About the System of Procedural Guarantees to Ensure the Rights of Participants in Criminal Proceedings //International Journal of Psychosocial Rehabilitation. – 2020. – T. 24. – №. 2.
14. Bazarova D. B. Procedural safeguards in investigating and adjudicating criminal cases by summary procedure //Theoretical & Applied Science. – 2016. – №. 12. – C. 34-37.