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AN ANALYSIS OF THE PROCEDURAL FEATURES IN INSTITUTING PRELIMINARY HEARING IN A CRIMINAL CASE

The introduction of the institution of preliminary hearing into the criminal procedural legislation determines the ability of the court to prepare a criminal case for the main hearing in order to eliminate the gaps made by the preliminary investigation authorities. In this context, the article analyzes the changes in the national criminal procedural legislation concerning the institution of the preliminary hearing in a criminal case; analyzed foreign experience of individual countries on this topic; the essence and objectives of this institution are determined, some features of its effective enforcement are discussed.

Keywords: *preparation of the case for trial, preliminary hearing, elimination of procedural obstacles, court, the objectives of the preliminary hearing, judge.*

Original article

INTRODUCTION. In the current criminal procedural 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 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 the Law of the Republic of Uzbekistan dated February 18, 2021 introduced a new institution of preliminary hearing in a criminal case.

Today, the application of the new procedural institution in practice is of great interest, because many representatives of law enforcement agencies and judges are not very familiar with the features of the preliminary hearing procedure in a criminal case. However, if you look back into the history of procedural science not only of our state, but also of foreign countries, you can be convinced that this institution has arisen and has been functioning for many years.

PURPOSE AND OBJECTIVES OF THE RESEARCH. The aim of this paper is to have a comprehensive understanding of the institution of preliminary hearing in a criminal case, which was introduced into the criminal procedure legislation of Uzbekistan. It is supposed to recognize this institution as a "filter" preceding the main trial, which will serve to remove obstacles of a procedural nature, inaccuracies and mistakes made in the criminal case.

The article sets the task of using various research methods to define the concept of the institution of preliminary hearing, to carry out some analysis of the new legislation regulating the procedural procedure for the application of this institution, to study the current state of the practice of using the institution of preliminary hearing in foreign countries.

At the same time, the article aims to put forward some aspects of the modification of the new legislation on preliminary hearing, for example, on the application of this institution in practice by the court.

METHODOLOGY. The study of the institution of preliminary hearing in a criminal case was carried out using comparative legal, as well as specific historical research methods. The presentation of the material was carried out sequentially, in order to establish the main features in the application of this procedural institution, the legislative practice and legal culture of various countries were analyzed in comparison with the legislation of Uzbekistan. At the same time, the historical prerequisites for the emergence of the institution of preliminary hearing are considered, since the previously existing institution of trial to a certain extent also carried out the functions of preparing a criminal case for trial.

RESULTS AND DISCUSSION. As the study of the criminal procedural legislation of the near and far abroad has shown, the institution of preliminary hearing is based on the English judicial procedure of arraignment (bringing to court). 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, and 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, then 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.

One of the key representatives of the Anglo-Saxon legal system is the United States. There is a similar English procedure for trial (preliminary examination), which is implemented in the courts of the US magistrate. That is, the American form of preliminary hearing is very similar to the English one, but it has some peculiarities. In the United States, a preliminary hearing is usually valid for cases of serious crimes (felonies), in which arrest is applied to a person. The format of the American preliminary hearing is as follows: the beginning of the preliminary hearing is the moment the indictment is registered with the relevant judge or other official[1]. At the preliminary hearing, the following issues are resolved: on the choice of a measure of restraint (as a rule, such measures of restraint as arrest, bail and personal surety are applied); on the possibility of concluding a "plea bargaining"; permission of the defendant's motions to call additional witnesses; partial familiarization of the parties with the evidence they have collected (Володина, 2014).

Based on the results of the preliminary hearing, it is concluded whether sufficient grounds have been identified for further progress in the case. Thus, if there are grounds for bringing the accused to responsibility for a dangerous crime, the magistrate (judge) decides to send the document of indictment to the court, which must consider the case on the merits (trial court).

In these courts, the subject of a direct assessment of the situation is the factual proof of the accusation brought before the court. Moreover, at this stage, the category of the procedure of proven guilty of the accused of the alleged offense is included in the subject of the court's direct assessment as an element of lawful and reasonable prosecution (paragraph "a" of § 872 of the California Penal Code). In fact, the subject matter, limits, procedural form and powers of the court are similar in situations where the powers related to the decision of the issue of prosecution are attributed to the jurisdiction of the grand jury (Davies, Hazel, Tyrer, 2010).

It is believed that these procedures "protect" the judge, who is called to resolve the case on the merits, from preliminary acquaintance with the case materials, from the "prejudging" conclusion about the guilt of the defendant even before considering the case on the merits. However, an objective analysis of the procedures related to familiarizing the defendant with the accusation and clarifying his opinion on the essence of this accusation; with the performance by the court and the parties of procedural actions preparing the court session on the merits, objectively indicates that, even before considering the case on the merits, before examining and evaluating the system of evidence according to the rules of the judicial investigation, the court without fail gets acquainted with the case materials, gives them assessment (Головненков, Спица, 2012, с. 45). Thus, even in this procedural order, the legislator failed to protect the court adjudicating the case from a preliminary assessment of the evidence by the prosecution, thereby neutralizing the complex of efforts associated with the procedure for trial by an independent, in theory, court.

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 by way of a preliminary hearing were considered in a preparatory, 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.

In this regard, we believe that the previous assignment session at the stage of bringing to trial can be considered as a prerequisite for the emergence of a preliminary hearing and consider it a kind of prototype of the proposed new procedural institution (Vogler et al., 2008, p. 48). When forming it, we should not mechanically transfer the experience of foreign countries, such as Great Britain (Ashworth, Redmayne, 2005, p. 94), the USA, etc., regarding the institution of preliminary hearing, we need to take into account all stages of

[1] Legislative and Regulatory Documents Code of Criminal Procedure of the Uzbek SSR (1959). Adopted at the 2nd session of the Supreme Soviet Uzbek SSR of the fifth convocation on May 21, 1959.

the development of the criminal procedure legislation of our state regarding the stage of preparing a criminal case for trial.

At the same time, one should take into account the fact that the preliminary hearing is undoubtedly significantly different from the previous assignment session of the court on the subjects participating in the court session; on the persons who will be given the right to initiate a preliminary hearing; on the grounds for its holding; according to the procedural order of its conduct; by the nature of the decision on the results of the preliminary hearing.

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 hearing in court are resolved, and a court hearing is scheduled (Володина, 2014, с. 6), "preliminary hearing is an alternative form of assigning the case to court proceedings" (Suyunova, Bodhisatva, 2021), "… the main task of the preliminary hearing is to ensure the trial of only those cases in which the preliminary investigation has been carried out with sufficient completeness" (Божьев и др., 2002, с. 15), and for the stage itself – "… clarification of essential questions, the answer to which will allow to establish the completeness and sufficiency of the collected materials for the consideration of the case in the court session …" (Лебедев и др., 2020, с. 421).

All of the above allows us to conclude that the stage of the preliminary hearing can be characterized not only as part of the preparation of a criminal case for trial, but also as a pre-trial form of control over the activities of the investigating authorities, during which errors and shortcomings of the preliminary investigation are revealed, violations of the criminal law are eliminated. Procedural law, the adversarial principle of the parties is ensured, the protection of the rights and legitimate interests of persons participating in criminal proceedings is guaranteed.

At this stage of preparing the case for trial, the court that has studied the criminal case is given the right to choose: whether to determine the need for a preliminary hearing in 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 the joint judge with the parties to discuss issues related to the further movement of the criminal case" (Рябинина, 2013).

When assigning a criminal case to trial, the court makes a decision alone, the prosecutor, the defence attorney, the accused are not involved in this stage, the judge independently appoints the criminal case to the hearing, having concluded that there are sufficient grounds for its consideration. Whereas the preliminary hearing in the case is a criminal process in which its participants are involved: the prosecutor, the accused (Ablamskyi, Tadjibaeva, 2021, p. 54), the defence lawyer, the victim, the witness; the court has the right to carry out some investigative actions, (for example, interrogation), satisfy the parties' requests to demand new evidence (for example, the appointment of a forensic examination), or decide the issue of recognizing the evidence as inadmissible (Rakhimova, 2020).

It should be noted that despite the fact that the procedure for conducting a preliminary hearing resembles the form of a court session, at this stage the judge is not entitled to assess the legality and validity of the charge brought against. We believe that it is necessary to clearly delineate and define the powers of the court when deciding issues related to the exclusion of inadmissible evidence, the verification of which is only possible to comply with the procedural law when collecting it. In other words, based on the results of the preliminary hearing, all procedural obstacles should be removed and the issue of the possibility of considering the case on the merits in a court session, during which an assessment of the legality and validity of the charge brought against, will be assessed (Suyunova, Bhushan, 2021, p. 82). Since the stage of the preliminary hearing precedes the trial of the case on the merits, based on the results of the preliminary hearing, the judge has the right not only to make a decision to remove obstacles, but also, if they are absent, to make a ruling on the appointment of a court session.

An important issue in 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 court proceedings, the constitutional principle of criminal procedure on open trial of criminal cases in courts should be followed, which applies to every court session where the participants in the process are involved. In addition, the closed holding of the 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 permitted 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 (Kazakhstan, Belarus), or the procedural law specifies the presiding judge at this stage (Ukraine).

Although the name of the order of the preliminary hearing in countries such as Russia, Kazakhstan, Kyrgyzstan (preliminary hearing), Azerbaijan (preparatory meeting), Turkmenistan (preliminary hearing), Moldova (preliminary hearing) sounds different, in all these countries this order essentially operates on the basis of a single model. That is, the preliminary hearing is conducted not by a specialized judge, but by the same judge who will later consider the case on the merits. The practice of the functioning of the institution of preliminary hearing in the countries of the Anglo-Saxon and continental systems of law, as well as in the CIS countries shows that the following provisions are the necessary general features of this order:

– preliminary hearing is an alternative form of assigning a case to trial, carried out only by a court in a special procedural order;

– the activities of the court are aimed at resolving the merits of the issues that served as the basis for the preliminary hearing;

– the initiative to conduct a preliminary hearing, the subject and scope of its conduct are initially limited by law or by the subjective will of the parties;

– during the preliminary hearing, the parties may discuss the sufficiency of grounds for considering the case in the court session, the scope of the accusation, the availability of evidence and compliance with the requirements of the law during the pre-trial proceedings (Spencer, 2002);

– at the preliminary hearing, it is determined whether the submitted applications and petitions of the parties to the case deserve satisfaction;

– the preliminary hearing ends with the adoption of a court decision – a resolution.

In the United States, a preliminary hearing is conducted by a grand jury, 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 The 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 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.

CONCLUSIONS. From the above explanation, it can be concluded that 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 charge sheet to remove obstacles to its consideration in court**.** In the new Law, the grounds for sending a criminal case to the prosecutor should indicate: 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 indicate 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 upon revealing grounds for bringing the defendant to criminal liability on a new charge or bringing a new person to criminal responsibility (Articles 416, 417 of the Criminal Procedure Code), providing an opportunity to resolve these issues during the preliminary hearing. The preliminary hearing stage should serve as "a kind of filter for poor-quality investigation of criminal cases" (Суюнова, 2021). 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 (Суюнова, 2021).

Based on the results of the preliminary hearing, the judge has the right to issue a ruling, which must be handed over to the parties and interested participants in the criminal process. The peculiarities of the institution of preliminary hearing are that at this stage the issue of guilt-innocence of a person is not essentially resolved, this stage is only a form of preparing the case for the hearing and creates legal preconditions for its consideration.

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 earliest consideration of the criminal

case on the merits, the 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.

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СУЮНОВА Д. Ж. АНАЛИЗ ПРОЦЕССУАЛЬНЫХ ОСОБЕННОСТЕЙ ВОЗБУЖДЕНИЯ ПРЕДВАРИТЕЛЬНОГО СЛУШАНИЯ ПО УГОЛОВНОМУ ДЕЛУ

Введение института предварительного слушания в уголовно-процессуальное законодательство позволяет суду подготовить уголовное дело к основному судебному заседанию с целью устранения пробелов, допущенных органами предварительного расследования. В статье проанализированы изменения национального уголовно-процессуального законодательства о внедрении предварительного слушания по уголовному делу, зарубежный опыт отдельных стран по этой тематике, определены сущность и задачи этого института, а также некоторые особенности его эффективного применения.

Ключевые слова: *подготовка дела к судебному разбирательству, предварительное слушание, устранение процессуальных препятствий, суд, цели предварительного судебного заседания, судья.*

СУЮНОВА Д. Ж. АНАЛІЗ ПРОЦЕСУАЛЬНИХ ОСОБЛИВОСТЕЙ ПОРУШЕННЯ ПОПЕРЕДНЬОГО СЛУХАННЯ У КРИМІНАЛЬНІЙ СПРАВІ

Впровадження інституту попереднього слухання до кримінально-процесуального законодавства дає можливість суду підготувати кримінальну справу до основного судового засідання з метою усунення прогалин, допущених органами попереднього розслідування. У статті проаналізовано зміни в національному кримінально-процесуальному законодавстві стосовно інституту попереднього слухання у кримінальній справі, зарубіжний досвід окремих країн із цієї тематики, визначено сутність і завдання цього інституту, а також деякі особливості його ефективного застосування. Дослідження інституту попереднього слухання у кримінальній справі здійснено з використанням порівняльно-правового та конкретно-історичного методів. Виклад матеріалу проведено послідовно з метою встановлення основних особливостей у застосуванні цього процесуального

інституту, проаналізовано законодавчу практику та правову культуру різних країн порівняно із законодавством Узбекистану. Розглянуто історичні передумови виникнення інституту попереднього слухання, оскільки раніше існуючий інститут судового розгляду певною мірою виконував функції підготовки кримінальної справи до судового розгляду. Особливості інституту попереднього судового засідання полягають у тому, що на цій стадії питання про невинуватість особи по суті не вирішується, це лише форма підготовки справи до судового розгляду. Зазначено, що цінність попереднього слухання полягає в тому, що воно є певним «фільтром» перед судовим розглядом справи. Під час попереднього судового засідання можуть виникнути нові обставини, які можуть стати підставою для передання кримінальної справи до суду або її припинення. Це слухання спрямоване на своєчасне усунення перешкод у справі до її вирішення по суті на стадії судового розгляду.

Ключові слова: *підготовка справи до судового розгляду, попереднє слухання, усунення процесуальних перешкод, суд, цілі попереднього судового засідання, суддя.*

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