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ISSUES OF THE FUNCTIONING OF THE INSTITUTE AND WAYS FOR ITS IMPROVEMENT

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Igilikov Jaksylyk Joldasbaevich

Applicant at Karakalpak State University, Uzbekistan

ABSTRACT

The study examines the functioning of the institute of filing motions and complaints in criminal proceedings, focusing on issues related to its regulatory framework within the Code of Criminal Procedure of the Republic of Uzbekistan. It highlights the need to establish this institute as an independent legal mechanism, detailing forms of submission, eligible persons, and procedural requirements. The research emphasizes practical and theoretical advancements, including the clarification of definitions, harmonization with international standards, strengthening the rights of the parties, and developing timeframes for efficient resolution. Issues such as insufficient regulation, arbitrary denial of petitions, and the ineffectiveness of complaint mechanisms at pre-trial stages are addressed. Comparative analysis with foreign legal systems reveals best practices for reforming procedures. Recommendations include ensuring reasoned decisions, timely responses, and disciplinary accountability for unjustified actions. The article proposes extending deadlines for post-investigation actions to enhance the rights of defense counsel and ensure thorough investigations, advocating for a balanced and effective approach to protect the rights of participants in criminal proceedings.

KEYWORDS

Criminal proceedings, motions, complaints, Code of Criminal Procedure, Uzbekistan, procedural regulation, participants' rights, pre-trial investigation, international standards, legal reform.

INTRODUCTION

The study of the institute of filing motions and complaints in criminal proceedings emphasizes some issues that should be regulated in the Code of Criminal Procedure of the Republic of Uzbekistan.

One of these issues is the establishment of the institute of filing motions and complaints as an independent institute, which will establish the form of their filing, persons who have the right to file them and other issues.

The practical and theoretical novelty of the settlement of motions and complaints in the Code of Criminal Procedure may have several aspects that are important both for the practice of law enforcement and for the development of the theoretical basis of criminal procedure. Examples may include:

1. Clarification and expansion of definitions, which is expressed by introducing clear and precise definitions of motions and complaints, distinguishing them and clarifying their scope of application in order to eliminate ambiguities and clarify procedures.
2. modification of the forms of petitions and complaints, namely the proposal to modify the established forms of complaints that can be applied in criminal proceedings, taking into account the problems in resolving them.
3. Emphasizing the rights of the parties, which includes strengthening the rights of the parties to a motion or complaint, taking into account the principles of fairness and the protection of individual rights.
4. Taking into account international standards, harmonizing definitions with international standards and best practices, which can strengthen the country's position in the global context and ensure compliance with modern standards of justice.

5. Theoretical aspects on the development of new theoretical concepts related to the nature and functions of motions and complaints, which can contribute to the development of the science of criminal procedure.

METHODOLOGY

Emphasizing the analysis that was made earlier, we believe that problems in practice may arise in relation to the form of filing complaints rather than petitions, since complaints by their nature are retrospective in nature. In other words, a complaint is filed against certain decisions and actions (inaction) of inquirers, investigators and must contain specific circumstances that are subject to appeal.

Having analyzed the trend that is observed in law enforcement practice, we found that when oral complaints are filed at the pre-trial stage of criminal proceedings, they are recorded in the protocols of investigative actions as comments of participants who take part in the investigative action.

However, often these complaints remain without proper attention and are not resolved further, as they do not meet the formal requirements for filing complaints, as complaints must have the following features for their consideration and resolution:

- The addressee to whom the complaint is filed (because the complaint cannot be filed in the name of the investigator, inquirer by virtue of the fact that their decisions and actions (inaction) are being appealed and they cannot consider a complaint against their own decisions);
- The person who files the complaint (since the circle of persons who can file complaints in criminal cases is limited);

- The decision and action (inaction) that is being appealed;
- Specific circumstances of the decisions that are subject to appeal;
- The reasonableness of the complaint, as due to workload, the official responsible for resolving the complaint may not understand the reasons and justification for the complaint;
- Date and signature of the person who submits the complaint, as the date establishes the deadlines for the resolution of complaints, and the signature confirms the fact that the person agrees and supports the complaint.

RESULTS

In our opinion, compliance with these requirements is necessary for the correct and timely consideration and resolution of complaints, which will ensure the proper functioning of the institute of appeal as a way to protect the rights of participants in criminal proceedings.

In comparison with complaints, petitions can be filed both in writing and orally, as oral petitions are recorded in the records of investigative actions and court hearings, as well as petitions are filed directly to the inquirer and investigator, who are conducting the proceedings in the criminal case. And this circumstance does not prevent their consideration.

2. Timing of consideration and resolution of motions and complaints in criminal proceedings also plays an important role, as timely consideration of motions and complaints in criminal proceedings contributes to the effective conduct of the investigation. Absence of delays allows for prompt decision-making and suppression of possible violations.

Quick and clear decisions on motions and complaints can prevent abuse and manipulation of the parties. Long waits for a decision can expose the system to the risk of corruption or undue influence.

It should not be forgotten that the purpose of this scientific work is to study the institute of filing motions and complaint as ways to protect the rights of participants in criminal proceedings. This institution, although formally exists in criminal proceedings, but it is not studied and regulated at the appropriate level. This factor is the reason for the ineffectiveness of petitions and complaints at the pre-trial stage to protect the rights of participants in the process. It is for this reason that the time limits should be regulated, as the failure to comply with the time limits should be punishable by the persons to whom these petitions and complaints are sent.

Analysis of studies of the practice of some countries, where the time limits for consideration and resolution of motions and complaints are regulated, reveals that this time limit for resolution of motions and complaints differs in some countries. In particular, Russia and Kazakhstan provide for immediate decision-making on applications, and if it is not possible to make an immediate decision, the relevant decision is made within 3 days. This provision in the Republic of Moldova is regulated by other terms, namely, if there is no possibility of immediate resolution of the application, the decision is made no later than 15 days after its receipt.

However, having studied the experience of other foreign countries, we believe that the petition should be resolved immediately after its receipt, and if there is no possibility to immediately decide on the petition, the decision shall be made within 3 days at the latest.

The reason why we have come to this conclusion is that the prompt resolution of motions has a positive impact on the functioning of the institution of filing motions, as it gives the parties the opportunity to influence the course of the investigation within the limits of the law. Also, various circumstances may arise that require the examination of additional materials. In such cases, the decision should be made within 3 days at the latest, as this term is widely and effectively applied in practice in some countries with the Romano-Germanic legal system.

3. The time limits for consideration and resolution of complaints differ from the time limits for resolution of petitions, because if petitions are submitted directly to the person conducting the criminal proceedings, complaints are submitted to the heads of the body of inquiry, investigative department or prosecutor at the pre-trial stage of criminal proceedings.

The reason for this is that it is these persons who can consider and resolve complaints about decisions and actions (inaction) of inquirers and investigators. Also at the time of filing complaints, the heads of the body of inquiry, investigative department or prosecutors, as a rule, are not aware of the circumstances of the case, for which the complaint is filed for this reason in each such case these persons need time to consider the subject of the complaint and take appropriate decisions.

In addition, as one of the most progressive countries in the application of innovations in criminal procedural legislation is the Republic of Kazakhstan. Under article 105 of the Code of Criminal Procedure, the procurator, the head of the investigative department and the head of the body conducting the inquiry must consider the complaint and notify the complainant of the decision within seven days of its receipt. Complaints about violations of the law during detention, recognition as a

suspect, qualification of the suspect's act, suspension, unauthorized inspection, search, seizure, temporary restriction on the disposal of property, suspension of transactions and other operations with property shall be considered within three days of receipt. In exceptional cases, when it is necessary to request additional materials or take other measures to verify the complaint, it is allowed to consider the complaint within fifteen days with notification of the person who filed the complaint.

DISCUSSION

We have studied the legislation of some other countries, which fix the terms of appealing decisions and actions (inaction) of inquirers, investigators, and came to the conclusion that the terms of consideration of complaints about decisions and actions (inaction) of inquirers, investigators should be no later than 3 days, and in cases where it is necessary to request and study additional documents, up to 15 days, of which the applicant must be notified.

In this way, it is possible to provide those responsible for reviewing the complaint with sufficient time to make a correct and comprehensive decision.

4. Further, attention should be paid to the persons who have the right to file petitions and complaints, as well as to the persons responsible for their consideration and resolution.

This issue is also relevant, as it is necessary to distinguish the persons who have the right to file motions in criminal cases, because if everyone has access to file motions, it may lead to artificial prolongation of procedural deadlines. So, for example, if a person who is not related to the criminal case will file motions, its consideration may lead to improper course of the investigation and expiration of the terms of the preliminary investigation.

As a result of the conducted research and analysis of theory and practice, we found that the list of these persons differs in some countries. Also, among the rights of witnesses there is no provision for the application of motions, which will be discussed in detail in the following paragraphs.

Thus, we believe that the suspect, accused, victim, their legal representatives and defenders, witnesses and other participants in criminal proceedings, whose rights and interests are affected, have the right to file motions in order to establish the circumstances relevant to the criminal case.

As for the persons responsible for authorizing applications, there are no particular differences in this matter, since the officials in charge of criminal proceedings have the right to consider and authorize them. Consequently, petitions are submitted to persons conducting initial inquiries, investigators, heads of investigative departments and their deputies, heads of initial inquiry units and their deputies, procurators and the court.

The inclusion of the court in this list of persons can be justified by the fact that motions are filed not only at the pre-trial stage of criminal proceedings.

It should be noted that the heads of the investigation department and their deputies, as well as the heads of the inquiry unit and their deputies, may consider petitions if they are conducting a preliminary investigation or inquiry, while exercising the powers of an investigator and an inquirer, respectively.

The persons who have the right to appeal against decisions and actions (or inaction) of the person conducting the initial inquiry, the investigator, the head of the investigation department and his or her deputy, the head of the inquiry unit and his or her deputy, the procurator and the court are participants

in criminal proceedings and other persons to the extent that the decisions and actions of officials affect their rights and interests.

Appeal in the courts provides for the filing of a complaint against determinations on the application of sanctions at the pre-trial stage of criminal proceedings, while at the judicial stage there are already such institutions of review of the court verdict as appeal, cassation and revision.

5. The reasonableness of the stated motions and complaints plays an important role in their timely and correct resolution. Despite the fact that the burden of proof lies with the state authorities responsible for conducting pre-trial and trial proceedings in criminal cases, the person filing a motion or complaint must motivate the need to accept their claims. The reason for this is that motivated demands and statements help the judicial authorities and the investigation to understand the essence of claims, demands or complaints from the applicant. A clear and complete motivation makes it easier to understand the subject matter of the case and facilitates effective investigation.

In other words, if a person filing a petition or complaint does not justify and specify his/her claims, the inquirer, investigator, prosecutor may not pay attention to the reason that gave rise to the petitions. It is necessary to take into account the time limitation and the heavy workload on inquirers and investigators, as a result of which such mistakes may be made.

In turn, if the person filing the petition gives the reasons for the petition, it will not take long to resolve the issue.

A detailed statement of reasons helps to identify the key facts and circumstances surrounding the case. This is important to more accurately determine what

actions or events formed the basis for the claims or complaint being made.

The petition should clearly state the claims and the reasons for them.

Complaints must contain a specific ruling (determination) or action (inaction) of officials responsible for the inquiry or preliminary investigation, which is subject to appeal, and must specify the requirements and grounds on which the person filing the complaint considers them unlawful.

6. The tendency to adopt reasoned rulings and determinations regarding petitions and complaints can be observed in some foreign countries where this process is regulated. For example, according to article 121 and article 122 of the Criminal Procedure Code of the Republic of Azerbaijan, a ruling on a petition or request must be reasoned and contain an assessment of the applicant's arguments. Petitions and requests aimed at a comprehensive, complete and objective clarification of all circumstances related to criminal prosecution within the framework of due process and at restoring the violated rights and legitimate interests of participants in criminal proceedings and other persons involved in criminal proceedings may not be rejected.

The body conducting the criminal proceedings shall take a reasoned decision on the arguments of the complaint and notify the complainant in writing.

Also, in our opinion, disciplinary responsibility should be provided for making an unreasonable decision on the results of consideration of petitions and complaints filed. However, this process should be regulated by interdepartmental acts of state bodies that carry out inquiry and preliminary investigation.

Disciplinary responsibility for unmotivated decision of officials who conduct criminal proceedings will ensure

that the institution of petitions and complaints will be effective. In practice, inquirers, investigators and other persons responsible for criminal proceedings often do not pay sufficient attention to motions and deny them without due consideration. In this way, they ensure that the defense lawyers stop filing motions and complaints. There is no other measure to influence these officials, and disciplinary liability should be envisaged.

The rejection of a petition or other application of the defense counsel in the procedural order is allowed only on the basis of a reasoned decision of the official conducting the pre-investigative inspection, investigator, investigator or prosecutor.

Thus, the study of scientific materials and practice of foreign countries shows the introduction of the mechanism of adoption of a motivated ruling (determination) on the results of motions and complaints in criminal proceedings.

7. According to Articles 375, 376 and 377 of the CPC RUZ, the investigator presents the materials of the criminal case to the accused and his defense counsel for familiarization after the end of the investigation. Also, Article 377 of the CPC RUZ sets out the procedure for the application and resolution of motions after familiarization with the materials of the criminal case. In accordance with paragraphs 2 and 3 of Article 377 of the CPC RUZ, at the request of the parties, they may be given time within three days to prepare and file a motion. The investigator issues a ruling on the full or partial rejection of the petition and notifies the person who filed the petition no later than three days from the date of the petition.

In this case, there is a problem, which is expressed in the fact that investigators, as a rule, in practice, refuse to satisfy motions after familiarization with the

materials of the criminal case, as the terms of the preliminary investigation is over, which shows the ineffectiveness of this mechanism.

If the investigator has no time left to carry out additional investigative actions and after familiarization of the accused and his defense counsel with the materials of the criminal case, these persons present petitions for the implementation of investigative actions, the investigator will be forced to refuse to satisfy these petitions. This problem is widespread among practitioners.

Article 377 of the Code of Criminal Procedure guarantees the right of the defense counsel to file a motion for additional investigative actions after the criminal case is concluded, but in 99% of cases the motion is unreasonably rejected by the investigator. Consequently, during the preliminary investigation, almost all motions of the defense counsel remain unsatisfied, insufficient attention is paid to the motives of the defense, and the right to defense is exercised formally.

It should be noted that in some criminal cases, certain investigative actions are required by law. For example, according to the Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan “On judicial practice in criminal cases involving illicit trafficking in narcotic drugs, their analogues and psychotropic substances”, to clarify that the conduct of forensic chemical examination in cases of crimes involving illicit trafficking in narcotic drugs, their analogues and psychotropic substances is one of the mandatory conditions for proving guilt.

Also, according to the PPVS “On judicial practice in cases of premeditated murder”, if there are doubts about the mental completeness of the accused or

defendant, an outpatient or inpatient forensic psychiatric examination should be conducted.

Moreover, in accordance with the PPVS “On judicial practice in cases of rape and satisfaction of sexual need in an unnatural form”, if there is evidence of the use by the perpetrator of narcotic drugs, their analogues, psychotropic, potent, poisonous or other substances affecting the intellectual and volitional activity of a person, it is necessary to establish their properties and the degree of their impact on the human body by appointing an expert examination, interrogation of specialists. If according to the results of the expertise it will be established that the guilty person used means or substances, for the manufacture, processing, acquisition, storage, transportation, forwarding or sale of which criminal liability is established, his actions are subject to qualification according to the aggregate of articles of the Criminal Code, providing liability for the specified crimes, and the corresponding part of article 118 or 119 of the Criminal Code .

CONCLUSION

We have considered only a certain number of moments when the legislator requires the appointment of appropriate expertise. However, in practice, investigators may make mistakes or assume that the appointment of expertise is not necessary. In such cases, the filing of petitions for expert examinations must be satisfied, as this requirement is regulated by the legislator.

Despite this, when filing motions to conduct an expert examination after familiarization with the materials of the criminal case, investigators often do not have sufficient time to appoint and wait for the results of the expert examination, so we believe that this issue should be regulated. Namely, in those cases when certain investigative actions are mandatory, but the

investigator made a mistake not to conduct it. Further, the defense counsel applies for conducting this investigative action, which is reasonable, after familiarization with the materials of the criminal case. However, due to the fact that the terms of the preliminary investigation or inquiry are expiring, the investigator and the inquirer are forced to refuse to satisfy these requests. As a result, the investigation is not conducted with the completeness required by the legislator.

In order to resolve this issue, it is necessary to provide for a gap of at least 15 days between the familiarization by the investigator of the materials of the criminal case file of the accused and his defense counsel, which will allow, if necessary, to carry out additional investigative actions at the request of the defense counsel.

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