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Issues of Developing the Adversarial Principle at The Pre-Trial Stage of Criminal Proceedings

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Abstract: This article explores the theoretical and practical dimensions of implementing the adversarial principle at the pre-trial stage of criminal proceedings. The relevance of the study stems from the growing need to ensure procedural equality and the right to legal defense not only at the trial level but also during the inquiry and preliminary investigation phases. The research aims to analyze existing legal norms, identify procedural gaps, and assess opportunities for enhancing the rights of the defense. Utilizing comparative legal analysis, synthesis, deduction, and observation, the study examines both national legislation and international best practices. The findings demonstrate that the adversarial principle is insufficiently applied before trial due to the lack of procedural status for participants, limited defense counsel involvement, and imbalanced functions between investigative and prosecutorial authorities. The study suggests introducing institutional reforms, including judicial oversight mechanisms and expanded powers for defense attorneys, to ensure genuine adversarial proceedings throughout all stages of the criminal process. These findings can be applied in legal reform initiatives, judicial training programs, and policy-making aimed at aligning Uzbekistan's criminal justice system with constitutional and international human rights standards. The research concludes that ensuring the adversarial principle at the pre-trial stage is essential for upholding fairness, transparency, and the rule of law.

Keywords: Adversarial principle, pre-trial proceedings, inquiry, preliminary investigation, procedural rights, prosecutorial oversight, criminal justice reform.

Introduction: One of the key factors in the development of a legal state and society is the existence of well-established institutions that effectively protect human rights and legitimate interests. It is well known that the formation of any system, the provision of its functioning, and its continuous improvement primarily depend on the presence of a supportive legal framework and economic stability.

According to statistical data, the internal affairs bodies of the Republic received the following number of crime-related applications and reports: 91,636 in 2021, 74,817 in 2022, and 24,970 in the first five months of 2023. A comparative analysis of the number of registered applications and reports was conducted to identify trends in criminal activity. The results of the study show that in 2022, the number of crime-related applications and reports decreased by 16,819 compared to the figures of 2021 [1].

It is well known that the participation of a defense attorney in criminal proceedings may begin not only at the trial stage, but even prior to the initiation of a criminal case. This suggests that elements of the adversarial principle can, at least partially, be observed at all stages of the criminal process. There are differing opinions in the legal literature on this matter. According to some scholars, "the adversarial principle can be fully realized only during the trial stage". In this regard, Professor G. Tulyaganova's assertion that "the application of the adversarial principle and its integration into the pre-trial investigation stage can still be considered a largely unimplemented issue in practice" [2] serves as a noteworthy addition to the above-mentioned viewpoint.

METHODS

This study analyzes issues related to the development of the adversarial principle at the pre-trial stage of

criminal proceedings by utilizing both national and foreign legislative norms, as well as the theoretical perspectives of legal scholars. The research employed comparative legal analysis, analytical and synthetic approaches, observation, generalization, induction, and deduction methods in the examination of relevant materials.

DISCUSSION AND RESULTS

In recent years, numerous reforms have been implemented in Uzbekistan aimed at improving the pre-trial stage of criminal proceedings. In particular, significant progress has been made in enhancing the institution of pre-investigation checks. Notable among the reforms are the Law of the Republic of Uzbekistan No.442 of September 6, 2017, "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Improvement of the Inquiry Institution", the Presidential Decree of May 14, 2018, "On Measures for the Radical Improvement of the Criminal and Criminal Procedure Legislation System"; the Presidential Decree No.6041 of August 10, 2020, "On Measures to Further Strengthen Guarantees for the Protection of Human Rights and Freedoms in Judicial and Investigative Activities" and the Presidential Decree No.60 of January 28, 2022, "On the Development Strategy of New Uzbekistan for 2022–2026". These normative legal acts emphasize the importance of enhancing the role and significance of the pre-investigation stage in promptly and thoroughly solving crimes, preventing criminal offenses, and protecting the interests of individuals, the state, and society. Special attention has also been given to strengthening the procedural status and rights of the subjects involved in pre-investigation proceedings during the pre-trial phase.

In the doctrine of criminal procedure law, as well as in legal literature, four types (or models) of criminal procedure are distinguished: adversarial, accusatory, inquisitorial, and mixed [3]. The issue of determining the typology of criminal procedure is closely related to the principles that are implemented in practice. Through the structure of these principles, their system, mechanisms of action, and other related aspects, it is possible to identify the form of criminal procedure. A review of the existing criminal procedure legislation shows the presence of the adversarial principle. The application of the adversarial principle in cases heard by the first and appellate courts corresponds to the content of the basic principles of criminal procedural law. However, the concept that "the adversarial principle should only apply at the trial stage" should not be the limit, and special attention must be given to the development of mechanisms for applying this principle throughout the entire criminal process. This is because one of the key requirements for a criminal process in the adversarial model is the equal distribution of procedural functions between the participants at all stages of the process. In the inquiry and preliminary investigation stages, the suspect and the accused have rights and obligations that ensure the adversarial principle (Articles 46 and 48 of the Criminal Procedure Code). However, a third party, such as an "arbitrator" essential for adversarial proceedings, is absent. Certainly, ensuring the adversarial principle leads to the realization of the defense attorney's rights and the expansion of their procedural capabilities. In this regard, legal scholar D. Bazarova emphasizes that "the measures being implemented to reform the institution of advocacy are aimed at ensuring the equalization of the procedural rights of the prosecution and defense parties in the criminal process" [4]. In modern scholarly works and legal literature, scholars emphasize the proposal to expand the scope of the adversarial principle and implement it in the inquiry and preliminary investigation stages as well [5].

However, according to the opinion of many scholars, "an adversarial relationship between the investigator and the accused is not possible during the preliminary investigation, as at this stage the functions of accusation, defense, and decision-making are not yet present" [6]. V. Bozhyev, on the other hand, argues that the adversarial principle is not applied at all stages of the criminal process because:

a) there is no equality between the parties;

b) the subjects responsible for the proceedings mix the functions of investigation, accusation, and decision-making, and the prosecutor, in addition to the accusatory function, also supervises the legality of the investigation and inquiry;

c) at the pre-trial stage, the function of decision-making is carried out not by the court, but by the investigative bodies and the prosecutor;

d) at these stages, the court has no role in deciding the case [7].

Furthermore, in our opinion, the lack of a clearly defined legal status for the individuals involved in the first stage of pre-trial criminal proceedings – the pre-investigation stage – leads to violations of their procedural rights. This situation undoubtedly leads to the conclusion that it is not possible to implement the adversarial principle during the pre-investigation stage.

According to B.K. Khudaybergenov's views on the rights of participants in the pre-investigation process, the procedural status of the participants involved in the initiation of criminal proceedings is considered problematic. This is because, under national legislation,

there are no procedural statuses such as the victim or the suspect during the pre-investigation process, and these statuses are determined only after the initiation of a criminal case. Additionally, since the complainant does not have a procedural status under the Criminal Procedure Code, it can be assumed that they also do not have procedural rights [8]. On the other hand, B.B. Khidoyatov argues that "since the pre-investigation check is the initial stage of the pre-trial proceedings, all participants in this stage must be able to use all procedural rights and obligations" [9].

Indeed, one of the problems associated with the pre-investigation process is the absence of concepts such as "the person conducting the pre-investigation check", "the victim", and "the person under investigation" as well as their respective rights and obligations in criminal procedural law. In our opinion, to ensure the adversarial principle at the initial stages of the criminal process, it is essential to first define the procedural status of the participants and specify their procedural rights and obligations.

In the pre-investigation check, a number of investigative and procedural actions are permitted. For instance, Article 221 of the Criminal Procedure Code outlines four grounds for detaining a person suspected of committing a crime. In particular, paragraph 3 of this article states that the discovery of clear traces of the crime on the person, their clothing, or at their place of residence may serve as grounds for detention. It is well known that under this provision, a person suspected of committing a crime may be detained until the criminal case is initiated, as outlined in Article 224 of the Code. What is noteworthy is that it remains unclear how clear traces of the crime on a person or their clothing may be identified through procedural or investigative actions. In our opinion, in such a case, the need for a witness examination investigative action arises. This is because the norms of the Criminal Procedure Code related to inspection do not establish a procedure for inspecting a person's body. It is suggested that it can be conducted under Articles 142-147 of the CPC. That is, the identification of traces of the crime on the person's body, such as scratches, bruises, bloodstains, and marks, can only be identified through a witness examination investigative action in criminal procedure law.

From these conclusions, it can be inferred that even when a person is detained before the initiation of a criminal case, a witness examination is necessary. This, in turn, requires clarification of the issue of conducting a witness examination before a criminal case is initiated. It should be emphasized here that during the witness examination process, in addition to gathering evidence necessary for the case, it is also possible to achieve the resolution of the crime.

The implementation of the adversarial principle in the criminal process serves as a guarantee for the protection of individual rights and freedoms. In order to ensure equal rights for both the defense and prosecution, the court, while maintaining impartiality and objectivity, creates the necessary conditions for the parties to fulfill their procedural obligations and exercise their granted rights. An analysis of the French and German legal systems shows that they do not have an institution for pre-investigation checks. In these systems, investigation and criminal prosecution are conducted based on complaints and reports of crimes. During these stages, to maintain balance, provide equal opportunities to the parties, and strengthen the principles of adversarial proceedings, a judicial investigator is active. Furthermore, all participants possess a procedural status and have the opportunity to exercise all their rights and obligations.

The principle of adversariality should be applied from the pre-trial stages of a case. Indeed, the application of the adversarial principle during the pre-trial proceedings does not only reflect the defense attorney's activities in relation to the investigator's tasks of collecting and presenting evidence. It also manifests itself in establishing control over the legality of the actions of the prosecution side and ensuring that the person's rights and legal interests are freely implemented using the methods and means permitted by law, with the help of the defense attorney.

To summarize, proponents of applying the adversarial principle during the pre-trial stages argue that its application results in:

Firstly, the expansion of the rights of the defense attorney during the pre-trial process.

Secondly, it increases the opportunities for both parties to appeal to the court.

CONCLUSION

Accordingly, it is imperative that reforms in judicial and investigative practice extend beyond superficial modifications to include the introduction of new approaches and regulatory frameworks aligned with contemporary legal standards. Given that the principle of adversarial proceedings is enshrined in international legal instruments, it must not be confined solely to trial hearings in courts of first instance or courts of higher jurisdiction. Rather, it should be operational throughout all stages of the criminal process, including pre-trial procedures.

In this context, and with the aim of clarifying its doctrinal content, the following definition of the adversarial principle in pre-trial proceedings is

proposed:

“The adversarial principle in the context of pre-trial proceedings encompasses the presence of opposing parties, each actively and equally presenting substantiated perspectives concerning the case. The court, in turn, assesses this information as evidence and exercises judicial oversight over the conduct of both the prosecution and the defense”.

In practical terms, it is of paramount importance to ensure genuine equality of procedural rights between the parties and to establish an environment conducive to adversarial proceedings. This entails removing procedural barriers faced by suspects, accused persons, and defense counsel during the inquiry and preliminary investigation phases, and enhancing their procedural safeguards in a manner consistent with the fundamental right to a fair trial.

The study highlights that the development and effective implementation of the adversarial principle at the pre-trial stage of criminal proceedings is a critical component of ensuring procedural justice and safeguarding fundamental rights. Although the adversarial structure is well-established in the trial phase, its application in the preliminary investigation and inquiry stages remains limited due to procedural imbalances and underdeveloped legal frameworks. The research reveals that the lack of a clearly defined procedural status for participants, insufficient access to legal counsel, and the dominance of investigative authorities impede the realization of genuine adversarial proceedings before trial. Comparative analysis of foreign legal systems indicates that integrating elements such as judicial oversight, equal access to evidence, and expanded defense rights at early stages can significantly enhance fairness and transparency. Therefore, to align with international standards and constitutional guarantees, reforms must prioritize procedural equality, establish the institutional presence of defense mechanisms during pre-trial proceedings, and promote the active participation of all parties. Implementing these changes will not only strengthen the adversarial nature of the criminal process but also contribute to the advancement of rule of law and human rights protection in Uzbekistan.

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