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RESEARCH ARTICLE**CONSTRUCTION OF CONCEPT OF NEW MODEL OF INQUIRY IN THE REPUBLIC OF UZBEKISTAN.****Fayziev Shokhrud Farmonovich.**

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Actualization of the idea of improvement and reorganization of the actions of the inquiry officer is stored in the basic needs of the new science-based ideas to respond to the shortcomings of actions and “staff shortages” in law enforcement bodies in general.

Categorical apparatus concerning the institution of inquiry is not specified, both in theory and in practice. This is due to the fact that the “body of inquiry” is allocated to all the procedural powers, although it is actually unaddressed illusory stage with procedural burden of responsibility which is entrusted to the investigator and head of the body of inquiry.

What is the foundation of the criminal case, and its further fate! The central figure, which is “de facto”, is operating officer, but as far as Criminal Procedure Code does not refer to such person or term, it is not difficult to predict what the future holds for the institution of inquiry as it looks like “a house built on shaky, unjustified procedural foundation”.

Thus, today the problems not regulated by operational and investigative officers in criminal procedure directly disrupts the entire pre-trial, and subsequently, the judicial phase of the criminal proceedings.

Generally, in criminal proceedings taking place difficulties in understanding the essence of inquiry that eventually involving the substitution of notions. So, mainly inquiry means pre-investigation check or operational-search. Most interesting is that this understanding is not always narrow-minded, but unfortunately not professional! Most law enforcement officials have resorted to such interpretation about function of investigation. This is explained by the fact that some of the bodies of inquiry within its competence exercise both pre-investigation and operational-search measures, (i.e. at the stage of initiation of a criminal case or at any other stage of criminal proceedings), but it all happens before the procedural phase of the inquiry, or after its completion.

Pre-investigation check	Inquiry	Operational-search operations
Prior to initiation of criminal proceedings for a period not exceeding 30 days, depending on complexity	By instituting criminal proceedings within 10 days	Before or after the initiation of criminal proceedings, at any stage of the criminal process

Even a cursory comparison of these legal institutions gives reason to believe that an inquiry is the procedurally and functionally limited activity. If we take into account the fact that during the investigation the legislator has deprived the inquiry officer of all procedural instruments and almost all of the final acts and decisions, as well as put in the total dependence on the discretion of the prosecutor and the chief of the inquiry body. Almost rhetorical question is that what is the inquiry officer expected to do and how he/she can perform their function?

According to S.V. Lavrukhin and Y.S. Komyagin, the investigator is the “locomotive” of the criminal case (9, p.17). With this metaphor it is very difficult to accept that the modern investigative practice reflects different! The investigator is a person of formalization (persona de formalization), or desk people, the main job of which is only (without leaving the office) in the remedial design, and sometimes even in the duplication of investigative and procedural actions (except for some investigation) conducted by the agencies inquiry (or by OSA).

All investigative material is formed on the basis of “semi-finished” materials prepared by the bodies of inquiry, the employees of OSA. It should be noted that foundation and base of evidence lies in the works of inquiry officer. But in the end, all the “cream” obtained by overwork of inquiry officer gets to the investigator!

In our view, the staff of the OSA and the enquiry bodies, more mobile and flexible with respect to different circumstances, usually has more detailed information on the circumstances of the crime, however, unlike the investigator, they do not have procedural authority to operate.

How it is like in abroad? An ill-considered fast implementation of foreign legislative practice in the domestic law does not solve the problems of combating crime. For the optimal solution of this issue it is first necessary to analyze the classical types of differentiated forms of inquiry in criminal proceedings.

Typology of forms of criminal proceedings shows that in the world there are three basic models of inquiry:

1. The Roman-German model (the most common model - in action in most European countries);
2. The Anglo-Saxon model (valid in the United States, England, Canada, and etc.);
3. Muslim model (criminal procedure of Muslim countries - Iran, Pakistan, Sudan, Saudi Arabia - a mixture of religious and secular norms).

Great Britain is undoubtedly the legislator of Anglo-Saxon model of criminal proceedings. It should be noted that the criminal proceedings of England is unfamiliar with such special stages as part of a criminal case and the stage of preliminary investigation. Police produces original investigation, detention and interrogation of suspects, victims, witnesses, searches, collect evidence of guilt (2 p.6.). At the same time, police in Britain is the executive body authorized to make their own procedural decisions in connection with the investigation of crimes (7). The principle of the adversarial process, acting in England, according to which "the evidence provided by the interested parties directly to the court," greatly facilitates the work of the police, of course, he/she may request any information it deems necessary, but it is not obliged to give it in a report or another document and attach to the case. At the same time, the very nature of police activity is respected. Their activities are concrete: effort is given to prove that the person arrested has committed an act. If the court is convinced of the guilt of the person, the latter shall apply coercive procedural measures; otherwise it will send the material for revision. Nobody initiates a criminal case on the fact of the crime, and “the police is the only possible subjects of prosecution”.

US interpretation of inquiry within the meaning of the domestic process is the police - the main body of pre-trial proceedings, with responsibilities for the maintenance of public order and crime investigation. There is not such thing as the investigator in criminal proceedings in the United States legislation (13). In the US finding and securing evidence is bypassed without investigator’s help. In this regard, the pre-trial stage is a police pursuer - a true master of the criminal case (10). There is not the institute of initiation of criminal proceedings in the US and in England. The preliminary investigation involves a police investigation, criminal prosecution, after which undergo a preliminary judicial investigation. A police inquiry consists using overt and covert methods to check received

information about crime (10, p.83 - 84). At the final stage, the police who carried out the operational-search and investigative actions, reports to his immediate superior police what was done on the case and what was found. The head of the inquiry agency checks the correctness of the materials and the qualification of the offense. He has the right to update or change the initial qualification and depending on it, to take a decision on further advancing the case (refer to the Court for further proceedings). In case of insufficient evidence case may be dismissed or resolved at the level of the police station (so-called “police established a recognized criminal settlement of the conflict” (1).

As a brilliant representative of the continental model of inquiry, **France** (5) has a number of features unique to her. In France it is totally controlled by the prosecutor. The scheme is as follows: upon receipt of information about the crime police inquiry begins, which takes place under the watchful supervision of the prosecutor. The inquiry ends with the provision of evidentiary material to the prosecutor, who gives them a legal assessment under the authority of the institution of criminal prosecutions. Then he either refuses to initiate criminal proceedings or initiates it. The investigation of crimes, in addition to the judicial police, is dealt by the courts of investigation and the prosecutor's office; it all depends on the severity of the crime. Police have the authority to conduct an inquiry, and the investigating judge conducting the investigation after the police inquiry. At the same time the investigation is carried out only in cases of serious crimes. Thus, the investigative staff is not overwhelmed by the minor crimes. The materials of less serious crimes are sent to the court, complex cases - to the investigating judge. They are called **mutatis mutandis** (court investigators)¹.

Germany:- German model provides two kinds of inquiry: 1) the inquiry for obvious crime carried out by the police of public safety (Schutzpolizei); 2) inquiry for all other crimes carried out by the judicial police (Kriminalpolizei) (3. p.10.). Since 1974, Germany has completely abandoned the investigation. Enquiry actually begins with information about the crime and to transfer the case to court, you must perform all procedural and investigative actions. The prosecutor is in charge of all the actions of bodies of inquiry. It is a kind of “tool” for collection of evidence and if a criminal case is excited, it is transferred to the court (5, pages 12-13).

Spain:- LECRIM- (Criminal Procedure Code) (11). Spanish accelerated order (Juicio rapido) differs from the reduced/simplified procedure (Juicio abreviado) that provides for the production of the first cases of misdemeanor, which do not cause difficulties in the investigation. And the last one is used for a wide range of crimes, the common denominator of which is the sanction for a term of imprisonment of not more than 9 years. In application of this procedure, the duty is imposed on the police inquiry, which prepares a report and sends it to the investigating judge on duty. If necessary, the investigating judge completes the investigation within 72 hours. Depending on whether he believed the investigation is complete or not, he makes decision on possible further application of accelerated procedure.

Italy:- as a leitmotif of current CCP, Italy has a clear distinction between the preliminary investigation and trial stage. A novelty of the criminal procedure law was the abolition of the investigating judge, the most responsible for the preliminary investigation is now entrusted exclusively to the prosecutor. He makes decision to approve the indictment. During the preliminary investigation and the trial stage perform different functions; information obtained during the investigation, can no longer be used as evidence during the final decision. If during the preliminary investigation it is necessary to collect evidence before making the relevant regulations, the risk of loss due to the commencement of the trial, the prosecutor and the accused shall be entitled to transfer them to the judge in advance (8).

Russia:- an inquiry into the Russian criminal procedure has two varieties: an inquiry into the general order and inquiry in an abbreviated form. Enquiry to the general procedure involves the deadline - 30 days, at the end of which make up the indictment sent to the prosecutor for approval and referral of the case to the court.

Enquiry in abbreviated form applies with respect to categories of criminal cases in which the law allows accelerated production. It is initiated by the suspect, who admitted his guilt, the nature and extent of harm caused by the crime, and did not dispute the legal assessment of the actions contained in the decision to initiate criminal proceedings. This initiative is reflected in the appropriate application of the suspect. Overall, this model of inquiry in abbreviated form completely reflects the need that is expected in practice for long time as a tool that would allow us to provide

¹ Since brought by us information are not direct extractions from considered norms of CCP of foreign countries, but result of the scientific analysis, they may differ from the original texts.

the pre-trial proceedings in the mainstream of criminal cases quickly and thus provides a mode of procedural economy (4).

Repeatedly there were attempts to change inquiry into shortened form in the Criminal Procedure Code of the Russian Federation (12).

We consider main features of **Muslim model** of criminal procedure, consisting of the principles of humanity and irrefutable evidence.

The peculiarity of proof in the criminal trial of the Muslim countries is that the proof for the many crimes is based on Shariah, which in many cases directly refer Criminal Code and the Criminal Procedure Code of the Islamic countries.

In Islamic law all crimes are divided into three groups or categories: “Hudud”, “Qisas and Diya” and “Tazir”. It should be emphasized that the proof for the category “Hudud” carried out in the manner prescribed in the Koran and Sunnah, strictly in accordance with Shariah. The main sources of evidence listed in the Koran and the Sunnah are the witnesses and the oath. Typically, these two sources are central to the system of evidence in the Muslim criminal procedural law (6).

An interesting fact is that in a criminal case the judge is forbidden to use extra-judicial information on the case. This is motivated by the fact that the judge on the basis of the information received in advance, can then make a decision without evidence. Thus, the goodness and the admissibility of evidence should be provided in a trial before a judge. If we consider the fact that Islamic law is the only figure of the judge performing the proceedings, criteria of his internal beliefs are formed solely on the basis of the evidence.

However, a strict burden of proof in the course of Muslim criminal procedure is imposed on the victim or the prosecutor, and requires them to set their own criteria for a high degree of certainty. It is better to several real criminals evade responsibility than to lay the blame on an innocent man. In the circles of practitioners there is an opinion that “oral evidence generally imposes an unrealistic burden on the prosecution,” due to the fact that the majority of crimes are generally not committed in the presence of two male witnesses, known for their moral and physical integrity.

On the basis of experience of the Muslim, the Anglo-Saxon and Roman-German form of investigation of crimes that can be harmoniously implemented in national law emerges a kind of model of inquiry. Among the main advantages of this model, it is necessary to note the following points:

1. A separate category of criminal cases, the maximum penalty for which is not more than 5 years (in cases of crimes that do not pose great danger to society and less serious crimes);
2. Limited circle of participants (the person in respect of which the inquiry is made under the simplified procedure, the suspect, their defenders);
3. An exception to strict application of coercive procedural measures (other than detention);
4. Lack of use of labor-intensive investigation (listening ongoing negotiations with phones and other communication devices, experiment, exhumation of the corpse, etc.);
5. The term not more than 10 days, with a subsequent extension to 10 days (with judicial authorization);
6. The ability to interact with the full operational and investigative bodies, followed by obligatory performance of all written assignments.
7. Terms of simplified procedure of inquiry are as follows: When made an application² for the inquiry in a simplified order by a person against whom the proceedings are conducted (with the consent of the victim - on cases brought by private prosecution in accordance with Article 325 of the Criminal Procedure Code of the Republic of Uzbekistan), investigator produces the following: explains a person in respect of which the production is performed or a suspect of his rights and obligations under the simplified procedure of inquiry, finds out whether he is aware of the essence and possible legal implications of the simplified procedure for the inquiry.

It should be noted that the introduction of a new model of inquiry will shorten pre-trial stage, will provide a more thorough and high-quality production of criminal cases by reducing the workload of the investigator and speed up

² Such application is founded on confession of the guilt and has no inverse power.

justice as a whole, which in turn will unload and temporarily remove the issue of increasing number of state officials, responsible for the production of a criminal case.

The introduction of the modernized order of inquiry in the criminal trial of the Republic of Uzbekistan will ensure the efficiency of criminal proceedings, it will then be guaranteed the rights and legitimate interests, and those who being under criminal prosecution will not have the necessary “procedural package” of rights and duties.

References:-

1. Winter Bachmeier L. The main features of the preliminary investigation stage of criminal proceedings in the United States / preliminary investigation in the criminal process in Central Asia between the inquisitorial and adversarial model / under editorial Schroeder F.K., Kudratov M. Frankfurt Main. Peter Lang. 2012. p.72; Pastukhov P.S. Features of police inquiry in the criminal trial of the USA. “International criminal law and international justice”, 2013, N 5.
2. Bulatov B.B., Nikolyuk V.V. Criminal proceedings of foreign countries. Omsk, Omsk Law Institute of Russian Ministry of Internal Affairs, 1999. p.52.
3. Best E. Criminal procedure in Germany. Criminal proceedings. // 2014. № 4. p.10.
4. Girko S.I. Predictions and concerns about the prospects of the inquiry in an abbreviated form. // Russian investigator. 2014. № 5. p.p. 22-26.
5. Golovko L.V. Archetypes of pre-trial proceedings, the possible prospects of development of the national preliminary investigation // Criminal proceedings. 2014. №2. p.p. 12-13.
6. Gusenova P.A. Features of proving in Muslim law / Eurasian Law Journal. - № 9 (76) 2014 (the date of circulation: 10.04.2015. [Http://www.eurasia-allnews.ru/](http://www.eurasia-allnews.ru/))
7. Derishev Yu.V. Concept of the criminal pre-trial proceedings in the legal doctrine of modern Russia: Monograph. Omsk. 2004. p. 83; Stoyko N.G., Shaginian A.S. Criminal proceedings in England and Wales, Belgium and Denmark (comparative legal aspect). Krasnoyarsk, 1997, p.p. 19, 21, 27.
8. Illuminati J.. Building adversarial model of criminal proceedings in Italy. Criminal justice is connection of times. Proceedings of the International Conference St. Petersburg, 6-8 October 2010. p. 35.
9. Lavrukhin S.V., Komyagin Y.S. Procedural function of investigator. // Russian investigator. 2014. №9. p.p. 17, 20.
10. Larichev V.V. Preliminary investigation of crimes in the United States and Germany: PhD. dissertation. M., 2004. p. 189.
11. Romeu F.R. Criminal proceedings in Spain. The equality of the parties in the pre-trial stages. // Criminal proceedings. 2012. №2. p.8.
12. Ryabinin T.K. Enquiry - independent form of pre-trial proceedings. // Russian investigator. 2013. № 19. p. 44-48; Popov I.A. Inquiries in abbreviated form: advantages, disadvantages, and the first results. // Criminal proceedings 2013. №3. p.p.19-22; Sumina A.A. Short inquiry: dead-born children of reformers of criminal proceedings. // Lawyer 2013. № 10. p.5-8; Koryakin V.A. Inquiries in abbreviated form in the section of procedural deadlines. // Russian judge. 2014. № 9. p.p. 25-28. Fadeev I.A. Legal basis: whether the predictions and concerns about the prospects of the inquiry in an abbreviated form come true? // Russian investigator. 2014. № 4. p.p.22-26; Girko S.I. Criminal procedural functions of the police in the Russian Federation: Monograph. M.: FGKU “Institute of the Russian Internal Ministry”, 2013. p.p. 62-75.
13. Hashem T. Comparative analysis of the criminal trial of Russia, Britain, France, USA and Germany. // Internet version of the magazine “Law and Life”. (the date of circulation: 10.04.2015. <http://www.law-n-life.ru>).
14. **Fayziev Sh.** Last changes in the constitution of Republic of Uzbekistan and its influence to executive authority // The Republic of Korea 1st Asian Forum for Constitutional Law. 2005 Seoul, The Republic of Korea. p.p. 211-238; **Fayziev Sh.** Right of person during investigation in the Republic of Uzbekistan. Proceedings of the international scientific-practical conference “The rights and duties of man and citizen: actual problems of theory and practice” / Bragin T.A. - M: International Law Institute, 2013. p.p.230-233; **Fayziev Sh.** Necessity of legislative regulation of operative-search activity in Uzbekistan. Proceedings of the international scientific-practical conference “Criminal proceedings: procedural innovations theory and forensic practice” for the 95th anniversary of Tauride University. Simferopol. 2013. http://www.jurkonf.crimea.edu/Sbornik_Alushta_2013.pdf; **Fayziev Sh.** Initiation of criminal case by the bodies of inquiry. Problems and solutions in modern science: Proceedings of the XVIII International scientific-practical conference on the philosophical, philological, legal, educational, economic, psychological, sociological and political sciences. Gorlovka. Ukraine. 2012. 200 p. 160-163.; **Fayziev Sh.** The effectiveness of the bodies of inquiry in the Republic of Uzbekistan. Actual problems of combat against crime: a collection of articles of the international

scientific-practical conference of students and young scientists, held in honor of the honorable prosecutors, Honored Lawyer of the Russian Federation, associate professor of public prosecutor's supervision and the organization of law enforcement Chelyabinsk State University Robert Valentinovich Golubev / M.G. Yanin. Chelyabinsk, Russian Federation. 2012. 470; **Fayziev Sh.** Collection and preservation of evidence by bodies of inquiry. Actual problems of law and the judiciary in contemporary Russian society. Collection of articles (based on the International scientific practical conference on 11 April 2008). In two volumes. T. 2. Krasnodar, 2009. 234 p. 59,62; **Fayziev Sh.** Comparative legal analysis of the criminal procedure of the inquiry (for example: the Republic of Kazakhstan and Uzbekistan) // International law and the development of national legislation: Materials of International scientific and practical Conference. - Karaganda: Publishing House of the University, 2008. - p. 503-506. **Fayziev Sh.** Comparative legal analysis of the criminal procedure of the inquiry by the Criminal Procedure Code and the Criminal Procedure Code of Russia the Republic of Uzbekistan // Actual problems of effective justice: articles, commentaries, practice / Belgorod Law Society (under. Ed. Kiminchizhi EN). The Russian Federation, Belgorod Constant, 2007, vol. 2. -p. 84-86. : **Fayziev Sh.,** Hidoyatov B. The main stages of the legislative regulation of inquiry in Uzbekistan // International Conference Evolution of criminal justice in the former Soviet territory: a comparative legal aspect: Materials of the international scientific-practical conference in 3 books, on 22-23 June 2006. Book II -Kiev. - p. 126-134.; **Shohrud Fayziev** Die Rechte des Angeklagten bei der Beweisaufnahme. Die strafprozessuale Hauptverhandlung zwischen inquisitorischem und adversatorischem Modell. Eine rechtsvergleichende Analyse am Beispiel des deutschen und des zentralasiatischen Strafprozessrechts. 2014 -141-144.