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RESEARCH ARTICLE

PRELIMINARY HEARINGS: OPTIMAL PROSPECTS OF IMPLEMENTATION IN THE STAGE OF APPOINTING CRIMINAL CASE FOR TRIAL.

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Abstract

This article is based on an analysis of foreign experience and arguments considered on optimal opportunities to introduce the institute of preliminary hearing in the criminal procedure legislation of the Republic of Uzbekistan, as a new form of judicial activities in criminal proceedings

Introduction:-

Today, issues of strengthening the independence of the judiciary and expansion of its powers in the criminal proceedings are of particular importance, the relevance of which is determined by the necessity of theoretical understanding and practical development of the constitutional requirements for the recognition, observance and protection of the state of rights and freedoms by means of justice, especially in such a specific area as a justice on criminal cases.

During successive judicial reforms to strengthen the role of the court in criminal proceedings not only led to the introduction of judicial review at the pre-trial stage, but also to the procedural provisions of practical transformation of the court in criminal proceedings as a whole.

In this light, the subsequent logical step in the format of the tasks of the next stage of the domestic legal and judicial reform, which consists in consolidating the achievements of judicial reform and advancing it further, particularly with regard to the empowerment of the judiciary, should be a significant transformation in preparation of the case for the court hearing by introducing the institute of preliminary hearing that directly serve the effective implementation of the adversarial principle in criminal proceedings.

In the Criminal Procedure science, a preliminary hearing is a form of direct judicial review of the conformity of actions of bodies of inquiry and preliminary investigation requirements of the law, which is a sequence of steps in preparation for the court hearing, during which through the implementation of the adversarial principle to solve the basic issues of further movement of the criminal business in order to achieve the objectives of criminal proceedings.

However, some scientists of criminal procedure reasonably considered preliminary hearing as a separate stage of the criminal proceedings, the content of which is the implementation of judicial control over the completeness and

legality of preliminary investigation, the validity of the charges and enough materials for consideration of the criminal case on the merits[1].

The lack of a unified theoretical framework for determining the essence of the institute of preliminary hearing objectively manifests itself in the fact that in the frame of procedural science finally defined the concept of the institution, its value, the nature, content and principles of operation.

The content of the preliminary hearing is provided by the system of criminal procedure law and implemented in the form of strict procedural actions of the court and the prosecution and defense.

The study of the principles of the optimal functioning of the institution of the preliminary hearing, its values and its tasks, of course, is an actual scientific problem, has important theoretical and practical significance.

Development of a single theoretical approach to defining the nature and content of the Institute of the preliminary hearing in the criminal proceedings can not affect the efficiency of the activities of the court, and thus ensuring the constitutional rights of individuals in criminal proceedings and the achievement of its tasks.

Considering that the judge in its content, implementing powers in preparation for the trial, carries out judicial review[2], it should be noted that one of the forms of this control is performed by preliminary hearing.

This conclusion allowed us to study the essence of the institute of the preliminary hearing and others. Thus, according to A.P.Guskov preliminary hearing, in fact, is a specific form of judicial review, part of a system of control and verification actions in preparation for the trial[3].

N.N. Kovtun relates the institute of preliminary hearing to the final form of judicial control over the progress and results of the finished preliminary investigation[4].

Considering the stage of bringing the accused to justice more integrally, as the tasks of the stage destination of the criminal case for the court hearing must be distinguished:

1) control and audit - verification of compliance at the stage of investigation of the individual requirements of the criminal procedural law, namely jurisdiction if a criminal case to this court, there is enough reason to consider it in court[5]; whether the circumstances leading to termination or suspension of the proceedings (paragraphs 1-3, article 396 of the Code of Criminal Procedure);
2) law provisional - subject to any cancellation or change of preventive measure, measures have been taken to ensure reparation for the crime of property damage (paragraphs 5-6, article 396 of the Code of Criminal Procedure);
3) administrative - issues related to the purpose of the trial (article 395 and 397 of the Code of Criminal Procedure).

[1] V.A. Lazarev Preliminary court proceedings in the criminal trial of the Russian Federation. - Tutorial. - Samara, 2003. -p.54.

[2] In the legal literature the following forms of judicial review are identified:
1) review over actions or decisions that prevent further movement of the criminal proceedings;
3) review over the actions and decisions limiting (violating) the constitutional rights and freedoms of citizens;
4) review of the legality and the results of the pre-trial stage of the proceedings;
5) review of the legality and validity of court decisions which have not entered into force;
6) review over the decisions of the court, which entered into force.

[3] See. Kovtun N.N. Judicial review in the criminal trial of Russia. Monograph. Nizhny Novgorod: Nizhny Novgorod legal Academy. - 2002. - p. 29.

[4] Guskova A.P. Procedural legal and organizational preparations for the hearing on the CCP. - Orenburg, 2002. - p. 56.

[5] Kovtun N.N. The same work. - p. 28.

In this situation also decided: whether procedural requirements are observed in the production of investigation and whether the indictment was in accordance with the procedural law.

It should be noted that the institution of a preliminary hearing in one form or another is successfully operating in the criminal trial of some foreign countries such as Britain, France, Russia, and Spain, Italy and others. Given this fact, it is very important to study foreign experience, practice application of the procedure of the Institute. Despite the fact that a preliminary hearing for today is the procedural order in the criminal trial of these countries, a controversial theory in science is the procedural issue of the nature of the activities of the court as part of the preliminary hearing, and the principles of functioning of this institution.

In view of what in our view, to decide on the optimal implementation of the preliminary hearing in the domestic proceedings should be analyzed especially foreign regulation of the procedure.

The classical form of the preliminary hearing is observed in criminal proceedings of Great Britain. Thus, in cases of crimes prosecuted on indictment the preliminary hearing is held by Magistrate Judge. The judge is not included in the discussion of the defendant's guilt and must sort out whether there is enough evidence collected in the case, to be able to make an initial conclusion, namely that the defendant committed an offense punishable by indictment; if all the evidence is admissible, i.e. if they are not received in violation of the law. In particular, the terms of a preliminary examination of the case in court are the following:

1. Mandatory participation of the accused at the preliminary hearing;
2. Magistrates consider only the evidence presented by the prosecution;
3. Protection does not mean proof;
4. The sources of evidence should be examined to speak any written statements of witnesses, under oath, or their written explanations;
5. For the Court retained the right not to consider the merits of the prosecution evidence. In other words, the merits of the evidence made dependent on whether or not a dispute between the parties if there is no dispute, the procedure can be purely formal.

According to a preliminary review[6] of the case, the court may take one of the following decisions:

1. Surrender of the accused to the court, if the magistrates come to the conclusion that this "sufficient evidence" presented by the prosecution;
2. Dismiss the case if the conclusion is the opposite[7].

The American form of a preliminary hearing is very similar to English, but has some features. In the **US**, a preliminary hearing is valid as a rule for cases of serious crimes (felonies) which is applied to the face of the American arrest. Format preliminary hearing is as follows: Beginning of the preliminary hearing is the time of registration with the relevant judge or other officer of the indictment document[8]. At the preliminary hearing resolved issues: the election of a preventive measure (usually apply preventive measures such as arrest, bail and personal guarantee); about the possibility of "plea bargaining"; the resolution requests the accused to call additional witnesses; partial introduction of the parties with the collected evidence[9]. At the end of the preliminary hearing concludes, if found sufficient grounds for further progress of the case. Thus, if there are grounds for bringing the accused to justice for the crime of dangerous magistrate (judge) decides on the direction of the indictment to the court document, which is to hear the case on the merits (trialcourt).

[6] It should be noted that after the decision for the prosecution of the accused, this step can not be considered finished. The beginning of the trial is preceded by another so-called procedure of "disclosure of evidence» (disclosure), the meaning of which is that each of the parties forming materials "my case" meets the evidentiary base of the opponent.

[7] Gutsenko K.F., Golovko L.V., Filimonov B.A. Criminal proceedings of Western countries. 2nd edition, Publishing house "Mirror" -M, 2002. - p.120.

[8] In this case we are talking about the original procedural document, which sets out the essence of the charge against the suspect briefly charges. In cases of dangerous crimes in the subsequent stages of the proceedings, this document may be replaced by a procedural document, the so-called indictment, which is approved by a large jury and determined the subject and scope of the proceedings.

[9] At the preliminary hearing in the main "probed" the evidence gathered by the prosecution. Protection at this stage prefer not to advertise their own evidence, reserving them for the main trial.

In **France**, the stage of bringing to trial today is the prerogative of the Court of Assizes, enactment of the Law of 15 June 2000, the corresponding function is abolished which was former indictments chamber and the was simplified procedure for bringing to trial of the accused. Since the preliminary hearing to the classical form, which operates in common law countries is not inherent to the French production, it can be considered as an analogue of a preliminary investigation of investigative chamber[10] in which permitted the two main powers: 1) consideration of complaints subject to appeal the decision of the investigating judge; 2) consideration of the invalidation of procedural acts and actions committed during the inquiry and preliminary investigation of first instance.

In the Criminal Procedure legislation of Spain, provided accelerated procedure, (Juiciorapido) which apply in cases of crimes of medium gravity without causing difficulties in the investigation.

In the application of this order the obligation to conduct an initial investigation into the responsibility of the police, who prepares a report and sends it to the investigating judge on duty. If necessary, the investigating judge completes the investigation within 72 hours. If the investigation is completed, and the judge decides on the continued use of the accelerated procedure, appointed a preliminary hearing involving the prosecutor and the accused in the course of which, the question of the dismissal of the case or about conducting the trial. In the case of such a decision, the prosecutor read out the charges against the prosecution and the defendant has the right to accept it or reject it and make it its statement. If the defendant agrees with the prosecution, the judge passes sentence immediately. If the defendant does not agree with the prosecution, the court appointed date of the meeting, and the case is referred to the Criminal Court for further consideration.

In cases of serious crimes as Spain applies the so-called ordinary procedure (JucioOrdinario), the production of preliminary hearing takes place only in a part. In such cases the investigation carried out by the investigating judge, who completed the investigation directs the case to the Provincial Court. Last performing the function of the accused are brought to justice after hearing the petitions of the parties shall make one of the following decisions: 1) on the appointment of the case for trial; 2) refer the case to the investigating judge to continue the investigation. In making the first indictment the prosecutor requested to prepare a document, and protection - a statement for protection of accused. Thus, the Provincial Court acts as a kind of filter sieve deal with unfounded accusations and at the same time providing the defense the opportunity to form a defense position against the charges[11].

In **Italy**, preliminary hearing is in a form that you do not meet in other countries. In general, it should be noted that in the Italian criminal proceedings the preliminary investigation and the trial are clearly delineated.

The principle of separation stages can be illustrated by the protocols of investigative actions. They are not transferred to the judge, and the criminal case remains with prosecutor and only with the parties. At the hearing the parties are permitted to use the results of investigation, but only if you want to question the accuracy of the testimony.

The presiding officer may take into account the statements made outside the trial to assess whether the witness can be trusted, but the presiding officer is not entitled to base its decision on these applications. At the hearing it is forbidden to disclose the records of investigative actions, except in cases where the witness for one reason or another can not testify in court. The parties have free access to the materials of the criminal case, the presiding judge does not have such a right.
It should be noted that the Italian criminal procedure is characterized by a number of features borrowed from the continental legal system. These characteristics set it apart from the Anglo-American adversarial process. In the Anglo-American model is essential passivity of the presiding judge, who helps him to maintain the role of arbiter in the dispute. However, the main difference from the Anglo-American adversarial process is the presence of the principle of "mandatory prosecution". "Discretionary prosecution" provides Prosecutor broad powers to control the proceedings, starting with the moment when the decision to refer the case to the court, and ending with the right to completely abandon the charges. "Mandatory prosecution", in contrast, requires the implementation of a permanent

[10] This is due to the specificity of the French production of a criminal investigation, which is carried out exclusively by judicial authorities: the investigating judge, the investigation chamber, the Court of Assizes.

[11] Romeu F.R. Criminal proceedings in Spain. The equality of the parties in the pre-trial stages. Criminal proceedings. №2. 2012. p.8.

judge of control over the activities of the prosecutor, whose decisions are never binding on the judge. So, the judge may declare the defendant guilty, while a prosecutor seeks an acquittal; the judge can appoint a more strict punishment, something which asks the prosecutor; or the judge may change the qualification if the alleged act falls under the signs of another crime.

Thus, we can conclude that the Italian criminal procedure has a number of features that give it a special status, not relating it in pure form or in the Anglo-Saxon or the continental model of criminal procedure, which does not emit a single-stage procedure for committal for trial of the accused[12].

German model of bringing the accused to the trial is original and shows no signs of preliminary hearing, and the judge holds the main checkout function. Thus, in this stage, the judge considered one of two issues: the opening of the trial or the temporary suspension of the case. In this course, the question of proof can not be prejudged. The court decides on the opening of the trial, if the results of the inquiry show sufficient suspect of the accused in commission of a crime. German form of bringing to justice aims clarifying:

1. affordability and the need for continued prosecution of the accused;
2. prevention of unjustified proceedings in court;
3. the provision of the accused to make a request obistrebovanii additional evidence.

An interesting fact is that the German stage of the criminal process, to bring to justice, has long been considered very controversial[13]. It repeatedly liquidated and restored. The main argument of its opponents is that the bringing the accused to justice amounts to recognition of the proceedings before the court charges against him the crime. To remove this serious accusation, Part 1 of the Criminal Procedure Code §207 of Germany, the new version, provides that, in determining the committal for trial of the only states on admission charges to consider in the proceedings[14]. However, to completely deny the impact of certain solutions for the prosecution of the accused to the judge who will hear the case, it is impossible.

In the criminal procedure legislation of the Russian Federation provided for a different procedure for the preliminary hearing. A preliminary hearing is conducted by a single judge in a closed hearing with the participation of the parties, unless they have expressed in their desire. Parties may also file a petition to summon and question witnesses who know anything about the circumstances of the investigative action or withdrawal attached to the criminal case documents, for the recovery of further evidence or items on the appointment of forensic examination, to change the measure of restraint. In addition, the defense is entitled to make a request to call witnesses to establish an alibi of the defendant, and the defendant - for access to the criminal case.

The decision on the results of the preliminary hearing can not be appealed, except for decisions on the termination and suspension of criminal proceedings. If the decision is on the appointment of the hearing in respect of the issue of a preventive measure the case is returned to the prosecutor[15].

The grounds of the preliminary hearing are listed in Part 2, article 229 of the Code, which says that the preliminary hearing is held:

1. if the parties request to exclude evidence;
2. if there is a basis for returning the case to the prosecutor;
3. if there are grounds for suspension or termination of criminal case;
4. to solve the criminal case by the court in participation of jurors;
5. if the parties request to hold court proceedings in the manner prescribed part 5, article 247 of the Code of Criminal Procedure.

Based on the abovementioned, it is necessary to allocate the following common forms of preliminary hearing with its functions:

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[12] J. Illuminati. Building adversarial model of criminal proceedings in Italy. Criminal justice connection times. Proceedings of the International Conference St. Petersburg, 6-8 October 2010. P. 34.

[13] E.Best. Criminal procedure in Germany. / "Criminal proceedings, 2014.№4, p.10.

[14] Gutsenko K.F., Golovko L.V., Filimonov B.A. Criminal proceedings of Western countries. 2nd edition, Publishing house "Mirror" -M, 2002. - p.448.

[15] Gontar L. Preliminary hearing - an important story of criminal law. // "Judicial community», 2009.№1, p. 34.

1. the establishment of the presence (absence) of the circumstances preventing the consideration of the criminal case on the merits at trial measures to eliminate them;
2. creation of conditions for use during the trial only admissible evidence;
3. determination of the composition of the court for further consideration of the criminal case and the possibility of holding the trial in the absence of the defendant.

How is appointing the case for trial regulated in the criminal procedure legislation of the Republic of Uzbekistan?!

According to the current Criminal Procedure Code of the Republic of Uzbekistan, the judge, who received a criminal case with the indictment or decision to send the case to the court to apply coercive measures of a medical nature, appoints the case for a trial within a period not later than seven days from the date of its receipt by the court. The judge is obliged to highlight the wide range of issues, namely, first, whether the jurisdiction of the court case and sufficient basis for the consideration of the court hearing; secondly, whether the circumstances leading to termination or suspension of the proceedings exist; thirdly, whether chosen as a preventive measure against the accused; fourth, observing the investigation in the production requirements of procedural law; fifthly, whether the measures have been taken to ensure reparation for the crime of property damage; and sixth, whether the indictment drawn up in accordance with the procedural law.

All of these important decisions are being taken by a single judge, without the participation of the prosecutor, the victim, the accused, his defense counsel and other participants in the proceedings that, in our opinion, is fraught with the danger of prejudice to the rights and legitimate interests of the parties. It seems more democratic, if the judge considered these issues in terms of competition, by way of preliminary hearings with the mandatory participation of the prosecutor and the provision of real conditions for the participation of the parties. The judge shall ascertain and take into account their views, and in the presence of objections - substantiate its decision, while it is independent and is not limited to, someone else opinion. The judge in all these matters can be appealed to a higher court, which ensures their legality and validity.

Only in cases where the judge found that it is not triable by a court or found insufficient grounds for its consideration by the court, hearing the criminal case is sent back to the prosecutor. Upon termination or suspension of the proceedings the case is returned to the prosecutor only when it is apparent that the accused fled, and he/she declared wanted. In all other cases (when the preventive measure chosen correctly, no measures were taken to provide compensation for damage to property crime, the production of investigation and preparation of the indictment violated the requirements of procedural rules) law does not provide for the return of the case to the prosecutor. However, in these cases the individual judge return the case to the prosecutor, including in its definition of the need to clarify the circumstances and the conduct of investigations, including the questioning, confrontation, etc., which could easily be performed in court. Such definitions can hardly be regarded as reasonable and appropriate.

In view of this, in our opinion, it is justified and appropriate to introduce the institute of preliminary hearings in criminal proceedings, which requires the inclusion in the Code of Criminal Procedure of the Republic of Uzbekistan a number of changes and additions. In particular:

The procedure for the appointment of criminal cases for trial, as established in article 395 of the Criminal Procedure Code, should be supplemented by the convening of a preliminary hearing, if the judge considers the clarification insufficient, as eferred in article 396 of the CCP, or sees grounds for suspension or termination of the proceedings. These issues are so serious and complex that, according to the principle of competition for the adoption of decisions on them are not indifferent to the opinion of the prosecutor as the main representative of the prosecution and, if possible, other participants in criminal proceedings, with legal interest in the outcome of the case, as in cases of serious crimes - and administration at work or school and local authority in the place of residence of the defendant.

Introduction of judicial proceedings of this kind is a preparation for the court hearing as a preliminary hearing, due to the need to extend the application of the constitutional principle of adversarial court of first instance, as this hearing is aimed at the timely removal of obstacles on the case until its resolution on the merits.

Offering this procedural form of preparing the case for trial as a preliminary hearing, realized a long cherished idea of a "simple" transfer of the case to the court, of "mechanical", purely technical bringing the accused to justice and the inadmissibility of "prejudging" by the court at this stage on finding the guilt of accused.

Speaking about the preliminary hearing as one of the forms of judicial review, we take the position that judicial review relates to the criminal procedure activity and identify justice as a form of resolution of the case on the merits in the first instance court and judicial control as a special form of realization of justice in judicial -supervision stages, in the unity of their significant features.

Therefore, the need for legal and reasonable resolution of the court dispute between the parties, in view of the objective differences in the parties' interests in criminal proceedings, as a specific form of protection of violated or disputed rights is an essential feature not only of justice, but also to institute a preliminary hearing.

Thus, we can conclude that the major signs of the institute of preliminary hearing are the followings:
1. the preliminary hearing is an alternative form of assignment of the case to the trial carried out only by the court in a special procedural order;
2. activities aimed at the resolution of the court on the substance of the issues that gave rise to the preliminary hearing;
3. initiative to hold a preliminary hearing, the subject and limitations initially restricted by law or subjective will of the parties;
4. during the preliminary hearing, the parties can discuss issues about the sufficiency of the grounds for the proceedings in the court session, the amount of the charges, the availability of evidence and compliance during the pre-trial requirements of the CCP;
5. at the preliminary hearing, it turns out that whether applications and petitions filed by parties deserve to meet the case or not;
6. A preliminary hearing is completed with final court decisions - decisions.

Inclusion in general preparation for the trial of the Institute of the preliminary hearing, and it was extended to all categories of cases before the Court of First Instance, is an additional guarantee of the rule of law and the rights of participants in criminal proceedings, the form of the principle of competition in the administration of justice at this stage of production the criminal case.

The possibility to file a petition to hold a preliminary hearing in the pre-trial proceedings at the end of the accused and his counsel with the criminal case is designed to provide reality of judiciary at this stage of procedural activities.

It seems that at this stage after a timely application is well founded petition, for example, the exclusion of evidence, the investigator or the prosecutor will have to more carefully examine and analyze the totality of the evidence collected in the case, and it is possible to admit any evidence inadmissible, refusing to use them.

In conclusion, it should be noted that the analysis of the Court in the framework of the preliminary hearing in the light of the above objectives and features of this institution allows us to formulate the concept of the preliminary hearing, as well as to determine its nature and content.

Preliminary hearing is a form of direct judicial review of the conformity of actions of bodies of inquiry and preliminary investigation requirements of the law, which is a sequence of steps in preparation for the court hearing, during which through the implementation of the adversarial principle to solve the basic issues of further movement of the criminal case in order to achieve the objectives of the criminal proceedings.
Preliminary court hearing is provided by the system of criminal procedure law and implemented in the form of strict procedural actions of the court and the prosecution and defense.

Significance of preliminary hearing is:
1. perform supervision function of not letting to conduct court proceedings illegally or unreasonably.
2. would establish the existence of circumstances hindering the hearing of criminal case on the merits of judicial proceedings and take measures to eliminate them.
3. create the conditions for use during the trial only admissible evidence.
4. to protect the rights and legitimate interests of persons involved in criminal proceedings.

5. will create prerequisites for effective review of the merits of the criminal case practically, during the trial.

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