DEVELOPMENT OF CRIMINAL PROCEDURAL ACTIVITY OF PREJUDICIAL STAGES IN THE REPUBLIC OF UZBEKISTAN

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The problems of prejudicial stages and ways of its differentiation, first of all, demand exact definition of concept and content of this part of criminal procedure. Criminal procedure consists of five main and one exclusive stages (the stage of criminal case initiation; the stage of inquiry and preliminary investigation; the stage of court proceeding in the court of the first instance; the stage of appeal and cassation trial; the stage of enforcement of verdict; the stage of supervisory trial) [6, p. 14–18]. However, during movement of criminal case on these stages, their division into prejudicial and judicial ones could be noticed. Prejudicial stages accordingly include the stage of criminal case initiation and the stage of inquiry and preliminary investigation; other stages of criminal procedure thereafter enter into judicial part. Division of criminal procedure into prejudicial and judicial parts is not a new idea in the criminal procedure science. For example, according to M.V. Duhovsky, criminal procedure consists of two parts: preliminary proceedings and judicial proceedings [5, p. 99].

Many authors admit the modern theory of definition of prejudicial and judicial proceedings. So, for example, according to I. V. Tyrichev, stages of the criminal procedure are divided into prejudicial stages and judicial stages [21, p. 16–17]. However, it is unacceptable to agree with those authors [24, p. 4–5] who equate the concept of prejudicial proceedings to preliminary investigation. The analysis of current criminal procedural legislation of the Republic of Uzbekistan allows drawing a conclusion that prejudicial proceeding covers two stages: the stage of criminal case initiation and the stage of inquiry and preliminary investigation. Thus, the concept of prejudicial proceeding is wider than the concept of preliminary investigation.

Theoretical aspects of Relations of the stage of criminal case initiation and the stage of inquiry and preliminary investigation

According to A. V. Lensky, prejudicial proceeding is a uniform stage of criminal procedure, which has certain specifics distinguishing it from the judicial part of cri-

minal legal proceedings, at the same time, the stage of criminal case initiation must be excluded [10, p. 8–9]. Similar judgment is stated by S. P. Serebrova, who considers that before proceedings on criminal cases in a court of the first instance the uniform stage of prejudicial proceeding must be recognized. She says that consideration of criminal case initiation, as an independent stage of criminal procedure is not expedient [14, p. 50–51].

We cannot agree with this judgment and we adhere to positions of those authors who consider criminal case initiation as an independent and necessary stage of criminal procedure. A. R. Mihajlenko considers that criminal case initiation is a necessary, obligatory part of criminal legal proceedings. Any criminal case passes through this stage of criminal procedure. All attributes, which characteristic for a stage of criminal procedure are inherent in criminal case initiation [11, p. 5]. E. N. Nikiforova also believes that criminal case initiation is a stage, which cannot be left aside by any criminal case, and criminal case initiation as the initial stage means that the state competent body (the official) makes a decision about beginning of a case proceedings if attributes of a crime are present. The act of criminal case initiation serves as a legal basis for carrying out the procedural actions stipulated by the law in the subsequent stages of criminal procedure [22, p. 14]. L. I. Kukresh correctly marks that criminal case initiation as an independent and obligatory stage is not reduced to one-act action consisting of decision-making about the information of a crime, it represents a set of procedural actions regulated by the law on deciding a question on possibility of beginning a preliminary investigation of the crime [8, p. 6–7].

Each stage of criminal procedure has own attributes which are characterized, firstly, by specific tasks following from the general tasks of criminal procedure; secondly, by special circle of participants; thirdly, by specificity of criminal procedural actions and legal relations; fourthly, by a character of issued criminal procedural acts [21, p. 15; 22, p. 13]. The stage of criminal case initiation and the stage of inquiry and preliminary investigation have attributes, which characterize them as independent stages in criminal procedure. Evidently, it can be presented in the following table:

Stage	*Stage of criminal case initiation*	*Stage of inquiry and preliminary investigation*
Own tasks following from general tasks	Task consists of reception, consideration, and in necessary cases, addition of necessary data to primary materials about a crime with the purpose of determining legality of reason and sufficiency of the basis for criminal case initiation; the circumstances excluding proceeding on the case are also a subject to finding-out.	Problem consists of prevention or suppression of committing a crime; collecting, preservation, attaching, checking and estimating of evidences about all circumstances listed in articles 82–84 of the Criminal procedural Code of the Republic of Uzbekistan, and also ensuring compensation for the property damage caused by crime.

Stage	*Stage of criminal case initiation*	*Stage of inquiry and preliminary investigation*
Special composition of participants	There are such participants who are not present in the subsequent stages: applicant about a crime; person who is examined for solving the question of criminal case initiation	The circle of participants in this stage is much wider, than in the stage of criminal case initiation, and in this stage, there are participants who are not present in any subsequent stages: inquirer, investigator, suspect and the accused
Specific actions of these participants and legal relations	The act of criminal case initiation is some kind of border in legal relations, which arise between state officials (state bodies) empowered with authority, on one hand, and citizens – on another. Presence of the given stage is a guarantee against arbitrariness and abuses of officials	Under supervision of procurator, the inquirer and investigator carry out the activity on collecting, attaching and examining of evidences to establish the presence or absence of crime event, persons who are guilty to committing it, character and size of the damage caused by a crime and other circumstances, important for criminal case
Specific documents which sum up this activity	The decision of criminal case initiation, after which inquiry and preliminary investigation is carried out. The decision about refusal of criminal case initiation, after which criminal procedure is not carried out anymore.	The decision about termination of criminal case. The decision about sending a criminal case into the court for application of forced measures of medical character. The decision about sending a case into the court for reconciliation affairs. Drawing up accusing conclusion

Thus, it is apparent from the table that the stage of criminal case initiation and the stage of inquiry and preliminary investigation are independent stages, which any criminal case cannot leave aside and pass. In our opinion, these two stages together make one of phases of criminal procedure (prejudicial proceedings), other two phases are judicial phase and the phase of supervisory proceedings.

During analysis of current criminal procedural legislation of the Republic of Uzbekistan, following forms of prejudicial proceeding can be determined: criminal procedural activity before criminal case initiation; inquiry and preliminary investigation.

Criminal procedural activity before criminal case initiation includes procedural actions, which are admissible to consider before criminal case initiation (consideration of applications, messages and other data about crimes; detention of person suspected of committing a crime; examination of incident place; assignment and undertaking of examination). This criminal procedural activity is finished by a decision of criminal case initiation; decision about refusal of criminal case initiation; decision about transfer of application or message according to investigation division.

Inquiry is the primary form of investigation and represents procedural activity on performance of urgent investigatory

actions. They are defined as urgent investigatory actions on detection and documenting of evidences, which should be done immediately after criminal case initiation because delay of proceedings can result in disappearance, damage, falsification of evidences. The author considers as correct that the legislator does not specify the list of urgent investigatory actions in articles 339, 340 of the Criminal procedural Code of the Republic of Uzbekistan. In this connection, an inquirer has a right to carry out any investigatory actions during inquiry. Inquiry ends by transfer of criminal case to investigator. Exception is submitting the application for reconciliation by a victim (the civil claimant) or his legal representative. This application must include that the caused harm has been smoothed down and request for termination of criminal case by proceeding reconciliation. In this case, within seven days, an investigator makes decision about sending a case into the court with the consent of suspect.

Preliminary investigation consists of procedural actions and decisions of investigator (procurator, chief of investigation division) with the purpose of determining the event of a crime and circumstances that promoted it; exposure of person who committed it; suppression of criminal activity, providing the suspect and the accused with the right to protection, rehabilitation of wrongly suspected and accused person, ensuring the compensation of damage from a crime and taking the measures for prevention of crimes. According to the Article 345 of the Criminal procedural Code of the Republic of Uzbekistan, preliminary investigation is the obligatory on all criminal cases. Investigator takes all decisions about directing the investigation and carrying out investigatory actions independently, except for cases when the law stipulates reception of sanction from a public prosecutor or decision of court about remand, and bears full responsibility for their lawful and appropriate realization. The law allocates investigator with the right to give assignments and instructions on investigated affairs to inquiry bodies about carrying out investigatory and search actions and to demand assistance from them during carrying out of investigatory actions (Articles 343 and 347 of the Criminal procedural Code of the Republic of Uzbekistan). Preliminary investigation is finished by the decision about termination of criminal case, the accusing conclusion, the decision about sending the case to a court for application of forced measures of medical character or the decision about sending the case to a court for reconciliation affairs.

According to opinion of the majority of scientists, prejudicial phase of criminal procedure has the character of submission to the judicial phase of criminal procedure, as the first phase serves to the interests of the second one. The basis of prejudicial proceedings consists of preliminary investigation the name of which speaks for itself. Characterizing the activity of preliminary investigation, M. S. Strogovich specifies, that it "is conducted before the court trial and for the court trial" [15, p. 273]. N. A. Gromov and V. S. Chistjakova consider investigation is called as preliminary because it precedes the proceedings in court where a court investigation is carried

out [3, p. 232–233; 21, p. 281]. According to opinion of L. I. Kukresh, preliminary investigation plays auxiliary role in relation to court proceedings to certain measure. Conclusions on results of preliminary investigation about the main question of the criminal procedure concerning relation of person to committing a crime and his guilt have preliminary character [8, p. 22–23]. B. H. Toulebekova and some other authors consider that the term "preliminary investigation" already focuses that conclusions of an investigator on the case is not final. Final conclusions can be realized only in the form of judgment. Thus, conclusions of preliminary investigation do not express binding character for the court [18, p. 49].

Such characteristic of prejudicial proceeding is the same but not exact. In fact, preceding to court examination, prejudicial proceeding creates preconditions promoting successful solving of criminal cases by court. However, it would be a mistake to underestimate independent value of prejudicial proceeding. Firstly, preparation of materials for consideration of criminal case in court is not the certain task of criminal case initiation stage at all. Secondly, materials of criminal case in all cases after proceeding of inquiry are transferred to investigator instead of court (exception is a case on reconciliation). Thirdly, investigated criminal case may not reach a court. If legal bases are present, investigator or prosecutor can terminate criminal case.

It is also necessary to note that the name "preliminary investigating" does not reflect the activity of investigatory bodies precisely. The opinion of many authors who consider the investigation as preliminary one, comes out of that, investigation is carried out for the court and does not solve the question about guilt of a person, who is involved in the criminal liability [17, p. 40; 20, p. 193; 21, p. 281–282 and others]. The term "preliminary investigating" includes inquiry and preliminary investigation [13, p. 120; 22, p. 14]. According to specificity of construction of prejudicial proceedings in criminal procedure of the Republic of Uzbekistan, inquiry finishes by transfer of criminal case to an investigator, instead of court (exception are cases on reconciliation). If during proceeding of inquiry, it is impossible to make the final decision on criminal case, during proceeding of preliminary investigation, the investigator has enough powers to accept final decision on the criminal case. If sufficient bases specified in Articles 83–84 of the Criminal Procedural Code of the Republic of Uzbekistan are present, a criminal case can be terminated during investigation. On one hand, it is correctly specified by M. S. Strogovich, that an accused can be recognized as a guilty only by verdict of the court, but not by an investigator or a prosecutor [17, p. 40]. But on the other hand, an investigator, terminating a criminal case, concerning a person, who committed a crime for the first time, which does not represent a big public danger or less grave crime, eliminated the harm after committing the crime, truly repented on a committed crime and actively promoted disclosing, recognizes this person as a guilty of crime committing (according to the clause 2 part 5 of the Article 84 of the Criminal procedural Code of the Republic of Uzbekistan).

In connection with the stated, in our opinion, it is necessary to agree with those authors who consider, that investigation, being quite independent stage of the criminal procedure, should be named not as preliminary, but simply as investigation, this will reflect its essence more precisely [25, p. 45–46].

Thus, prejudicial proceedings in the criminal procedure are the phase, which consists of two stages (the stage of criminal case initiation, the stage of inquiry and preliminary investigation). Tasks of these stages are reception, consideration, and in necessary cases, addition of necessary data of primary materials on a crime with the purpose of establishing the legality of reason and sufficiency of basis for criminal case initiation, and also finding-out the circumstances excluding proceedings on case; prevention or suppression of committing a crime; collecting, preservation, fastening, checking and estimation of evidences about all circumstances listed in Articles 82–84 of the Criminal procedural Code of the Republic of Uzbekistan, and also ensuring the compensation of property harm caused by crime; exposure of guilty person and including him/her to participation in criminal case as the accused; decision of question on termination of criminal case, preparation of materials for court consideration.

Content of criminal procedural activity and its subjects

Among scientists and experts, the term "criminal procedural activity" is given in double sense. On one hand, criminal procedural activity is a version of social activity and has features, characteristic for any kind of activity – concrete, regular, systemic, orderly, expedient, and others, on the other hand, criminal procedural activity according to its content is a component of law protection activity. In legal literature law protection activity is understood as activity of the state on behalf of it by special representative bodies on maintenance the legality, law and order, protection of rights and legal interests of society, state, public and other associations of citizens, protection of rights and freedoms of person and citizen, struggle against crimes and other offences, which is carried out in established legal order, by means of application in strict conformity with the law of measures of legal influence (including the measures of state compulsion).

During characterizing the concept of law protection activity, today there is a widespread tendency to put in it a little bit limited content. So, for one such activity is only that what competent state bodies do in sphere of struggle against crimes; for others it is the maintenance of public order. Such approach is a little bit simplified because the sphere of the right protection is much wider, than sphere of struggle against criminality or infringements of public order [12, p. 12–13].

Law protecting activity is systemic and collective phenomenon, besides the criminal procedural activity, it also represents other kinds of activities: operative- search, administrative-legal, civil-legal, etc. At the same time law protection activity is a part of other activity, the state activity. But, it does not merge with it, and has distincti-

ve and essential attributes. When criminal action is committed, not all system of law protection activity "turns on", but only criminal procedural activity does.

Current criminal procedural legislation uses the concept of "proceeding on criminal cases" (Article 1 of the Criminal procedural Code of the Republic of Uzbekistan, etc.). Legal academic literature uses the term of "criminal procedure". Both of these terms are actually equivalent if understood in value of "activity" (purposeful system based on the law and actions of certain participants regulated by the law).

In the theory of criminal procedure, there is still no common opinion on the concept of criminal procedural activity, which is caused by the absence of legislative definition of the given category. Strogovich wrote that criminal procedural activity is «a set of actions of procedure participants carried out in the way established by the procedural law: court, prosecutor's office, inquiry and investigation bodies, an accused and his/her defender, victim and his representative on criminal case» [16, p.182].

According to opinion of I.V. Tyrichev, criminal procedural activity composes of system of procedural actions, in which besides state bodies (officials), persons, who are involved in proceeding of case according to some procedural position, take part. For this participation, the law allocates them with procedural rights or makes fulfill concrete actions [21, p. 12–13].

Authors of textbooks on criminal procedure consider that criminal procedural activity is not the sum of isolated actions, it is a uniform system of actions in the basis of which the unity of criminal procedure tasks lays. This activity, however, has certain directions, criminal procedural functions related with special purpose and role of each participant in criminal legal proceedings [6, p. 19; 22, p. 17].

The question on essence of criminal procedural activity always relates to decision of question on the circle of its participants. First of all, here it is necessary to answer the question: whether criminal procedural activity is a prerogative of inquiry bodies, preliminary investigation, prosecutor's office, court, officials of these bodies, participants of criminal legal proceedings, or it can also include actions of other persons involved in sphere of criminal procedure. In the legal procedural literature, various judgments were stated on this matter.

Some authors understood criminal procedural activity as the procedural duty of officials and bodies specified by the law [19, p. 10–11]. Adhering to such understanding of criminal procedural activity, authors thus limit it to competence of court, public prosecutor, bodies of inquiry and preliminary investigation.

Other authors recognize as subjects of criminal procedural activity some persons, on whose actions some direction of case proceeding depends, or those who enter the procedure for upholding certain interest, declare claims or object to claims of other persons, and the persons involved into sphere of criminal legal proceedings [2, p. 38; 7, p. 34].

Criminal procedural activity is understood, first of all, as activity of state bodies and officials, who are responsible for proceeding the criminal case, whose compe-

tence concerns initiation, proceeding of inquiry and preliminary investigation, and also consideration of criminal cases, that is activity of inquiry and preliminary investigation bodies, court, inquirer, investigator, public prosecutor, and judge. But, besides, the listed persons, the criminal procedural activity is carried out also by other participants of criminal procedure: chief of investigatory division, chief of inquiry body, secretary of court trial. Except abovementioned state bodies and persons; public associations, collectives and their representatives who participate in proceeding of criminal case (community prosecutors and community defenders), persons defending own interests in criminal procedure, defenders and representatives (an accused, suspect, defender, victim, civil claimant, civil respondent, legal representatives of minor or incapacitated, representatives of victim, civil claimant or respondent), and other persons participating in criminal procedure (eyewitness, expert, specialist, translator, witness) are engaged in criminal procedural activity.

Having analyzed the Criminal procedural Code of the Republic of Uzbekistan, it is necessary to note that the status of each participant of criminal procedural activity is determined by the law, each participant's activity is various according to content and volume, it is necessary component of that complex of actions which is named as a criminal procedure. Criminal procedural activity represents proceeding on a case. Each participant of the criminal procedure is a participant of criminal procedural activity, and has a right or obliged to carry out it. If we consider the procedural actions carried out by all participants of criminal case proceeding, as the state bodies and officials, which are responsible for proceeding of criminal case (court, public prosecutor, investigator, chief of investigatory division, chief of inquiry body, inquirer, secretary of court trial), so persons defending own interests in criminal procedure, defenders and representatives (accused, suspect, defender, victim, civil claimant, civil respondent, legal representative, representative), and also community of prosecutors both defenders community and other persons participating in criminal procedure (eyewitness, expert, specialist, translator, witness), we will be convinced, that any procedural action of any participant of criminal procedure represents the legal fact. This legal fact generates changes or terminates criminal procedural relations, procedural right or performance of procedural duty. Therefore, while carrying out inquiry and preliminary investigation and considering the criminal case by the court, there cannot be any procedural actions, which are not related with criminal procedural relations, made outside of these relations.

Carrying out of criminal procedural activity by the state bodies and officials, who are responsible for proceeding the criminal case in the form of criminal procedural relations, means that authority carried out by these bodies incorporates to their duties in relation to persons, defending own interests in criminal procedure, defenders and representatives, and also community of prosecutors, defenders community and other persons participating in the criminal procedure.

The persons defending own interests in criminal procedure, defenders and representatives, and also prosecutors community, defenders community and other persons participating in criminal procedure do have not only duties in relation to the state bodies and officials, who are responsible for proceeding the criminal case, but also the rights, using which they protect own interests.

Criminal-procedural relations are formed and developed for the duration of criminal case proceeding. Basically in the majority of cases, criminal procedural relations are arisen and get realized during proceeding inquiry, preliminary investigation and consideration of criminal case by court, this all proceeds after criminal case has been initiated. It is impossible to agree with opinion that if there is no initiated criminal case, there are no participants of procedure.

Some criminal procedural relations appear before criminal case initiation, at the stage of criminal case initiation. Therefore, if inquiry bodies, investigator, prosecutor or court has received an application or message on a crime, this application or message must be considered and one of the following decisions must be made on it:

1. Making decision on criminal case initiation;
2. On refusal of criminal case initiation;
3. On transfer of application or message according to jurisdiction.

Considering an application or message, and taking one of abovementioned decisions, an inquirer, investigator, prosecutor or court carry out criminal procedural activity. It is also necessary to note the circumstance that according to the Article 329 of the Criminal procedural Code of the Republic of Uzbekistan, survey of incident area and expert examination can be carried out before criminal case initiation. It means that besides officials, who are responsible for criminal case proceeding (inquirer, investigator, and public prosecutor), other persons can be involved in sphere of realization of criminal procedural activity before criminal case initiation, who participates in criminal procedure. It is an expert, who makes examination, specialist and witness, who participate in proceeding of survey of incident place.

All subjects of criminal procedural activity can appear during only in connection with case proceeding, because only the activity that is stipulated and regulated by criminal procedural law is procedural.

On the basis of the abovementioned, it is possible to draw up the conclusion that criminal procedural activity consists of actions of all participants of criminal procedure, which are carried out on the basis of and in the way stipulated by criminal procedural law (in some cases even before criminal case initiation), in spite of concrete goal that put by them.

Means of realization of procedural rights and duties of the participant of criminal procedure are concrete procedural actions, which all together form criminal procedural activity of participants of criminal proceedings and the content of criminal procedural relations.

Understanding the criminal procedural activity as certain actions in the procedure, it is necessary to mention that actions of all participating persons are not separated from each other. They are interconnected and supplement each other, and are car-

ried out by subjects of activity by virtue of given rights and assigned duties by the criminal procedural law.

Proceeding from the stated, it is possible to define the following concept of criminal procedural activity: *criminal procedural activity is a system of purposeful actions of criminal procedure participants from the moment of occurrence of initial stage of a criminal procedure, so the stage of criminal case initiation, and it is carried out by criminal trial participants in those limits, which are given to them by the criminal procedural law.*

Being a version of law protection, legal activity, the criminal procedural activity is characterized by complete unity and functionality. A conscious activity is always directed to some purpose. This fully concerns criminal procedural activity and to its separate components, procedural functions. According to opinion of A. M. Larin, procedural functions in criminal legal proceedings are the kinds (components, parts) of criminal procedural activity, which differ according to special direct purposes, which are reached as a result of case proceeding. From the given definition, it is easy to conclude, that distinction with a view of separate kinds (components) of this activity serves as the basis of division of procedural activity to functions. In other words, when we consider the purposes facing the procedural activity, it is possible to understand what functions it includes. Conception of the circle of functions, their correlation, purposes have developed reflecting the evolution of procedural activity caused by development of legislation, problematic demands of practice and undoubtedly, successes of jurisprudence. The analysis of instructions of criminal procedural law allows to allocate the following private purposes, which all together form the general aim of criminal legal proceedings: an establishment of objective truth; exposure of guilty persons and definition of measure of their responsibility; protection of guilty persons from excessively severe punishment and rehabilitation of innocent persons; compensation for a harm caused by crime; release from collection of unjustified claim in criminal procedure; observance of the rights and legal interests of persons participating in criminal case; elimination of conditions promoting crimes; maintenance of the order of proceeding the criminal case established by the law. In compliance with these purposes, we may differ in the criminal procedural activity the following functions: examination of case circumstances, criminal prosecution, protection, elimination and compensation of harm, objection against civil suit, maintenance of the rights and legal interests of persons participating in criminal case, prevention of crimes, procedural supervision and resolving the case [9, p. 4–12].

Procedural activity is not a chaotic set of functions, it is a system. Unity and integrity shown in internal structural communications and relations are inherent in it. These relations are complex enough. Attention is worthy not only on differentiating lines between separate functions, but also on points of crossing of functions and their interactions. Explanation of structure of criminal procedural activity can promote fair decision of the question of correlation of procedural functions and legal status of

participants of criminal procedure. An opinion is expressed that functions in the given meaning play "service role", because they allow "to define the status of the subject of procedural activity, to establish the circle of the rights correctly, which are necessary for realization of special purpose of the given subject in the procedure, and the duties assigned to it in these purposes" [4, p. 10].

However, it is necessary not to speak about service role, i.e. about submission of functions to the status, about deducing the status from functions (or on the contrary). Functions and the status in criminal legal proceedings are concepts of same level. The law regulates both of them. Undoubtedly, they are interconnected. The status of a process's participant is realized in those or other functions. The degree of participation of the given subject in realization of procedural functions is limited by its status. Nevertheless, here there is no unequivocal communication. System properties of criminal procedural activity find specific expression particularly in that a single function can incorporate the activity of several subjects with nonidentical status. So, participants of circumstances' examination of the case is not only an investigator, but also an accused, defender, victim, eyewitnesses, experts, etc. At the same time, usually the status of one subject is corresponded by several functions. For example, an investigator alongside with the examination of case circumstances carries out criminal prosecution, provides the participants of procedure with the opportunity of realization of their rights, etc.

Systemic character of procedural activity is shown in crossing of functions. Quite often single procedural act simultaneously, from different sides, concerns several functions. So, drawing up of the accusing conclusion relates to the function of criminal prosecution, (as the act of evidence estimation) to the examination of circumstances of case, and to maintenance of the right to protection.

The characteristic of structural relations between different procedural functions offered by A. M. Larin will probably seem complex. However, exclusive complexity is represented in procedural activity itself, which includes unity, diversity, and contradiction of aspirations and actions of persons with different and sometimes colliding motives and interests. The simplified variant leads to inadequate speculative ideas in the theory, to investigatory and judicial mistakes (miscarriage of justice) in practice [9, p. 14].

Criminal procedural activity has specific features (properties):

1) legal character, i.e. exact regulation by norms of criminal procedural law;
2) participants of this activity are the subjects of criminal procedural rights and duties;
3) criminal procedural actions of the specified subjects represent the means of realization of their procedural rights and duties;
4) being legally significant, such activity results in (or can lead to) occurrence of new, change or the termination of previously arisen criminal procedural relations [26, p. 20].

Legal character of criminal procedural activity is shown in that the order of crimi-

nal legal proceedings (beginning from the check of bases for criminal case initiation and finishing with consideration of cases in various judicial instances) is regulated in detail by criminal procedural law. Alongside with norms that are the general for the whole procedure and establishing the principles of criminal procedural activity, the rules of proving and rehabilitation, criminal procedural legislation also includes the norms regulating the stages, separate phases inside a stage, separate procedural actions [1, p. 9].

Criminal procedural code establishes certain order of criminal procedural activity, and its forms, which are important component of guarantees of justice. Legal character of criminal procedural activity is also shown in that criminal procedural legislation obligates the officials who are carrying out this activity, to provide legal rights and interests of citizens participating in it and to take all measures depending on them to immediately recover the broken rights (for example, the duty to provide the suspect and the accused with defender is assigned to inquirer, investigator, procurator and courts, article 50 of Criminal procedure code; the duty to explain the rights and duties to persons, who participate in investigatory actions is assigned to the inquirer, investigator, procurator and courts, article 100 of Criminal procedure code; in case of groundless detention, the chief of division of police or other competent person makes decision about release of arrested person, article 225 of Criminal procedure code). In turn, instructions of the law are obligatory not only for officials, but also for those citizens who are involved in sphere of criminal procedural activity (article 1 of Criminal procedure code).

Criminal procedural activity, which is carried out by authorized state bodies and officials, who are responsible for proceeding criminal cases, has state imperious character. It leans on measures of criminal procedural compulsion, which are applied in case of presence of the bases specified in the law, when requirements of state bodies leading process are not carried out voluntarily or there are preconditions for their default.

Compulsory character in realization of criminal procedural activity by the state bodies and officials that are responsible for criminal case proceeding, basically, revealed during carrying out the investigatory actions. Such investigatory actions as search, seizure, survey are accepted to consider as the measures, which are carried out in the way of procedural compulsion and provide evidence collection. The specified actions sometimes called as providing measures. Measures of such sort do not represent measures of liability for infringement of the law; they are compulsory means of achieving the purposes of legal proceedings. Each investigatory action as well as any procedural action cannot exist without state compulsion. Compulsory character of such investigatory actions as the search and seizure is more obvious as they are accompanied by active searching, organizational and administrative measures limiting personal and dwelling immunity.

In other investigatory actions (interrogation, experiment, appointment of examination) compulsion is not so obvious, but also takes place and it means that the official making decision about carrying out an investigatory action, duties of its possible

participants, formulated in the law in the general form, is personified, i.e. concrete persons get concrete duties, irrespective of their wish. Compulsion of interrogation, search and any other investigatory action serves in this sense as a display of "the principle of publicity" *(the principle of compulsion of criminal case initiation is called as the principle of publicity in procedural literature, the principle of publicity allocates state bodies with wide imperious powers, puts them in position of active subjects of the procedure, which are obliged to make all necessary procedural actions for revealing, suppression and disclosing of crimes, exposure of guilty person, fair punishment and inadmissibility of involving of innocent person in criminal liability and conviction)* [22, p. 66]. By virtue of this principle, an investigator, by own initiative, must carry out all the measures stipulated by the law to receive necessary evidentiary information and demand from all involved persons to perform the duties assigned to them. When the basis of investigatory action consist of operations which are carried out by the investigator (for example, survey without participation of experts), its compulsory character is expressed in the requirement in relation to involved persons, who must assist in carrying out of these operations, or at least, not interfere into these actions.

However, compulsoriness of investigatory action has also the second aspect related to further realization of an investigator's competences. In spite of the fact that the force inducing citizens to carry out the procedural duties honestly is often the conscious attitude to the public duty, the desire to promote actively the establishment of true, the internal promptings of this or that participant of investigatory action sometimes differ from legal instructions. In these cases investigatory actions being the means of maintenance of ultimate goals of procedure, require maintenance and special measures, the application of which will help to overcome the counteraction of unfair participant and to induce him to perform his duties.

Thus, measures of compulsion in investigatory action accompany legal duties of its participants and serve as guarantees of performance of these duties. The analysis of norms on investigatory actions allows to reveal two types of normative regulation of compulsory measures, which differ on the degree of expressiveness of duties and consequences of their default.

Duties of the majority of investigatory actions' participants are precisely determined in the law, and same precise instructions on measures of compulsion that can be applied to them in cases of unfair discharge of duties.

The liability of the expert for evasion of appearance to investigator and for refusal of performance of other duties is regulated in details in the Article 68 of the Criminal procedural Code of the Republic of Uzbekistan. Besides, expert and translator can be involved in the criminal liability for deliberate distortion of the fact sheet (Articles 68 and 72 of the Criminal procedural Code of the Republic of Uzbekistan, Articles 238 and 240 of the Criminal Code of the Republic of Uzbekistan). The forced measures applied to an eyewitness and victim in connection with default of duties

on interrogation, confrontation and presentation for identification are regulated in the law in detail. It is a forced appearance in case of absence, and involvement in criminal liability for refusal or evasion of submitting evidence and for false witness (Articles 55, 66 and 262 of the Criminal procedural Code of the Republic of Uzbekistan, Articles 238 and 240 of the Criminal Code of the Republic of Uzbekistan). The law also specifies in detail the forced measures during reception of samples for expert examination. So, if suspect, accused person, defendant, victim evade from appearance for receiving samples from them, they can be subjected to forced appearance and the samples will be compulsorily received from them, if the methods applied at this procedure are painless and not dangerous for the life and health of person (Article 192 of the Criminal procedural Code of the Republic of Uzbekistan).

In other cases, the statement of duties of a participant of investigatory actions, that are precise enough, is not accompanied by so certain instruction on measures, which can be applied at evasion of performance of these duties. *So Criminal procedural Code does not define the character of liability of "witness" (person who is present when an official document is signed, and who signs it too, to say that they saw it being signed) for evasion of performance of the duties. Although it is spoken in the Article 74 of the Criminal procedural Code of the Republic of Uzbekistan that "witness" bears the liability established by the law for evasion of performance of duties, but it is not specified anywhere what kind of liability it consists of.*

The law does not specify the measures applied to suspect, accused person, defendant, victim, eyewitness for refusal to undergo expert examination.

To systematize the compulsory measures, which can be applied by state bodies and officials that are responsible for criminal case proceeding in relation to unfair participants of investigatory actions, it is necessary to mean that all these measures are sanctions of criminal procedural norms. Accordingly, these are the measures of state compulsion, which can be applied by competent bodies and officials in cases of infringement of requirements of criminal procedural law.

The analysis of sanctions of criminal procedural law has allowed revealing of rather specific feature: some instructions of criminal procedural law are protected from infringements by sanctions of criminal law. So, Article 238 of the Criminal Code of the Republic of Uzbekistan establishes liability for the eyewitness, victim, expert and translator for deliberate distortion of the information. The Article 240 of the Criminal Code establishes liability of eyewitness, victim and expert for refusal or evasion of performance of their procedural duties. As the duties of the specified persons to appear on a call of inquirer, investigator, procurator, court and to give truthful testimony (conclusion) are established by the Criminal procedural Code of the Republic of Uzbekistan (Articles 55, 66 and 68). The default of these duties is an infringement of norms of the criminal procedural legislation. At such situation, the involvement in criminal liability does not only provide the punishment of per-

sons who have committed a crime against justice, but also protects the norms of criminal procedural law from infringements.

In this connection, we offer to make changes to the Article 240 of the Criminal Code of the Republic of Uzbekistan and to constitute it in the following edition:

Article 240. Evasion of execution of assigned duties of criminal procedure participants

Refusal or evasion of testifying by an eyewitness or victim; or refusal or evasion of giving conclusion by expert during the inquiry proceeding, preliminary investigation or in the court –

is punished by the penalty up to twenty five minimal sizes of wages or arrest up to three months.

Close relatives of the suspect, accused person or the defendant are not subject to the liability for refusal or evasion of testimony.

Evasion of witness[1] of performance the duties without valid excuse is punished by the penalty up to twenty-five minimal sizes of wages or arrest up to three months.

And also to make change to the Article 180 of the Criminal procedural Code of the Republic of Uzbekistan and to constitute it in the following edition:

Article 180. The decision or order on appointing the examination

An inquirer, investigator makes decision, and court orders to appoint an examination, in which should be specified the following point: motives, formed the basis for appointing the examination; material evidences or other objects sent for examination, with the instruction where, when and under what circumstances they were found out or seized, and what materials of case should be taken as bases while carrying out examination – data, on which conclusions of the expert should be based; questions put before an expert; the name of expert organization or surname of a person to which the examination is assigned.

In necessary cases, examination can be appointed before criminal case initiation.

The decision or order on appointing the examination are obligatory for the persons whom it concerns.

The persons evading undergoing examination can be subjected to forced appearance and compulsory examination, except for the cases specified in the Article 181 of the present Code.

Conclusions

Analysis of theoretical literature and legal norms of the Republic of Uzbekistan leads to the conclusions:

1. The stage of criminal case initiation and the stage of inquiry and preliminary investigation are independent stages, which any criminal case cannot leave aside and pass. These two stages together make one of phases of criminal procedure (prejudicial proceedings), other two phases are judicial phase and the phase of supervisory proceedings.
2. The analysis made showed that pretrial investigation, being quite independent stage of the criminal procedure, should

[1] The person who is present when an official document is signed, and who signs it too, to say that they saw it being signed.

be named not as preliminary, but simply as investigation, this will reflect its essence more precisely

3. On the basis of the abovementioned, it is possible to draw up the conclusion that criminal procedural activity consists of actions of all participants of criminal procedure, which are carried out on the basis of and in the way stipulated by criminal procedural law (in some cases even before criminal case initiation), in spite of concrete goal that put by them.
4. Criminal procedural activity is a system of purposeful actions of criminal procedure participants from the moment of occurrence of initial stage of a criminal procedure, so the stage of criminal case initiation, and it is carried out by criminal trial participants in those limits, which are given to them by the criminal procedural law.

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PROCESINĖ VEIKLA IKITEISMINIO TYRIMO STADIJOJE UZBEKISTANO RESPUBLIKOJE

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S a n t r a u k a

Aiškus ir tikslus baudžiamojo proceso stadijų apibrėžimas ir išskyrimas turi teorinę ir praktinę reikšmę. Autorius analizuoja šių procesų turinį teoriniu lygmeniu bei atskleidžia jų praktinę reglamentaciją Uzbekistano Respublikos baudžiamojo proceso kodekse. Atlikus teorinės literatūros ir norminių aktų analizę yra daroma išvada, kad savo turiniu ir sprendžiamais uždaviniais ikiteisminio tyrimo pradėjimo ir kvotos bei parengtinio tyrimo stadijos yra dvi savarankiškos proceso stadijos. Šios dvi stadijos sudaro vieną – ikiteisminio tyrimo stadiją, kitos dvi stadijos yra teisminis bylos nagrinėjimas ir priežiūra. Taip pat autorius teoriškai pagrindžia nuomonę, kad parengtinis tyrimas turėtų vadintis „tyrimu“, atsisakant sąvokos – parengtinis. Straipsnyje analizuojamas ir procesinės veiklos turinys bei daromos išvados, kad procesinę veiklą sudaro visų proceso dalyvių, veikiančių Baudžiamojo proceso kodekso nustatytomis formomis ir tvarka, veikla.

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