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Research Article

ENSURING BY THE PROSECUTOR OF THE ADMISSIBILITY OF THE MATERIALS OF THE PRE-INVESTIGATION CHECK

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ABSTRACT

In theory and practice, the issue of the admissibility of the materials of a pre-investigation check conducted in accordance with Articles 3202 and 329 of the Criminal Procedure Code is crucial. As a rule, such materials are usually the explanations of the victims, eyewitnesses, suspects. In this regard, a fair question arises about the procedural relations between the protocol of interrogation and the explanation. There is no consensus among procedural legal scholars on this matter.

KEYWORDS

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INTRODUCTION

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M. Seleznev, for instance, admits the possibility of using such materials in the process of proving, if there are no doubts regarding their credibility in essence. [1]

N.V. Sibileva, who holds the opposing viewpoint, disputes the existence of evidence at the stage of initiating a criminal case. [2]

We prefer the position of N.M. Kipnis, which holds that the explanations and other documents originating from the applicant, along with the reference documents and some others documents, may have the value of admissible evidence. However, it is unacceptable, according to N.M. Kipnis, to include into the criminal process under the pretext of "other documents" the explanations of potential defendants and witnesses as well as various "honest admissions" that support the position of the prosecution, which are received outside of procedural legal relations and in the absence of procedural guarantees, while substituting the testimony of a witness, suspect, accused required by law. [1]

In the context of changes in approaches to highlighting the criteria for the admissibility of evidence, the view of the authors of the monograph "Theory of Evidence in Modern Criminal Procedure" does not appear to meet contemporary requirements. According to them, "if the investigative action itself is carried out and its results are fixed in compliance with all the rules set by law, then the factual data obtained in this way can sometimes be used in proving, but with reference to another type of evidence (according to the source)". Thus, according to the authors, the testimony of a person interrogated before initiating a criminal case can be considered as a statement (Article 110 of the Code of Criminal Procedure of the RSFSR) or an explanation (Article 109 of the Code of Criminal Procedure of the RSFSR); The testimony of the "accused" obtained by the person conducting the inquiry in a case where a preliminary investigation is required may also be considered as the testimony of a suspect. [2]

In some instances, it is quite justified, in our opinion, to use explanations, victim statements and explanations, and reference documents gathered during the pre-investigation check as procedural proof because these materials can be regarded as the "other circumstances" mentioned in Art. 81 of the Criminal Procedure Code. The grounds for using explanations in proving may be situations, where the interrogation of a person who previously gave an explanation is impossible for any reason, due to the necessity eliminate contradictions between the explanation and the testimony given during the investigation, etc.

In addition, we consider it acceptable to use materials (in the evidence system) of inspections and audits, operational-search materials, prepared and sent to the preliminary investigation bodies in accordance with the requirements of the criminal procedure legislation of the Republic of Uzbekistan.

[1] See: Seleznev M. Some aspects of the admissibility of evidence // Zakonnost. 1994. -№ 8. -p. 39.
[2] See: Sibileva N.V. Admissibility of evidence in the Soviet criminal process. -Kiev: KGU, 1990. -p. 31.

[1] See: Kipnis N.M. Admissibility of evidence in criminal proceedings: Abstract of the thesis. ...candidate of legal sciences. -M., 1996. -p. 19.
[2] Theory of evidence in the Soviet criminal process. Ed. 2nd edited and updated. -M.: Legal literature, 1973. -pp. 244-245.

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Practitioners frequently inquire about how confessions should be recorded (or documented)? particularly internal affairs bodies. Should a lawyer be permitted to attend when an explanation is taken? Should the so-called protocols for the seizure of weapons, narcotic substances (drugs), financial records drawn up by the body of inquiry or the body carrying out operational-search activities before the initiation of a criminal case be recognized as acceptable?

The trend toward stricter standards for evidence admissible in judicial practice appears to be directly related to the resolution of these and other problems.

In order to properly execute a confession statement, a protocol must always be drawn up strictly in compliance with Article 90 of the Criminal Procedure Code. It seems that prosecutors are doing the right thing by developing, together with representatives of other law enforcement agencies, (formal) templates forms of such protocols.

In practice, it can be seen that occasionally a pre-investigation check is conducted by a person not specified (as a subject authorized to draw up a protocol) in Article 90 of the Code of Criminal Procedure. For instance, an operative of the criminal investigation department can take a confession in the commission of a crime, by requesting the offender to write an application (confessing about the committed crime and asking for some cooperation to help) addressed to the head of the criminal investigation department. However, it appears that such a confession will act as a statement of guilt only after the protocol is drawn up by the corresponding person after the initiation of a criminal case.

Regarding the possibility of a lawyer being present when receiving an explanation, it appears that the person conducting the pre-investigation check should accede to such requests since pursuant to Article 26 of the Constitution of the Republic of Uzbekistan, everyone is guaranteed the right, under which he is provided with all opportunities for protection, including to receive qualified legal assistance (regardless of his procedural status - author's note).

However, it appears that since he is not granted any additional rights under the criminal procedure legislation, such as the ability to question the interviewee, he should express his right to be present only after obtaining an explanation before the interview even starts.

Regarding the question of whether the so-called seizure protocols are admissible, it should be noted that numerous legislative acts governing the operations of each law enforcement agency have been adopted recently. These norms contain provisions that permit the seizure of particular items and documents from citizens.

For instance, in accordance with the regulatory legal acts of the Republic of Uzbekistan, the Department of Internal Affairs has the authority to seize weapons, ammunition, and explosive materials from citizens if there is proof of a violation of the law governing financial, economic, entrepreneurial, and trading activities that entails criminal liability; withdraw the necessary documents for material assets, cash, credit and financial transactions, as well as samples of raw materials and products; seize from citizens and officials documents that have signs of forgery. [1]

[1] See: Decrees of the Cabinet of Ministers of the Republic of Uzbekistan dated April 21, 2001 "On measures to strengthen the fight against crime, organized crime, terrorism and drug trafficking",

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Therefore, it is required for the prosecutor to research the relevant regulations for possible abuse of authority by one or another law enforcement agency in the production of non-procedural seizure of any items.

In any case, it appears that the prosecutor should prioritize their procedural forms (search, seizure) when making any seizures and instruct the operational services to take actions to secure evidence in the context of an already initiated criminal case.

In conclusion, it should be emphasized that the prosecutor must always determine whether the pre-investigation check is carried out by an authorized person.

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