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Stages of lawyer investigation

Abstract: Systemic elements of lawyer investigation are temporal stages its conducting and volume of forthcoming work done, which is determined at conclusion of an agreement to a client independent on nature of instruction.

Current stage of criminal proceedings also plays a substantial role but only in the case if criminal process has been already begun.

Keywords: lawyer investigation; criminal process; court proceedings; defence; stage; criminal procedural activity.

As it noted, in our standpoint, a lawyer investigation is the criminal procedural activity of a lawyer who fulfils the functions of protection of individuals and legal entities in pre-trial and court productions from the time of an agreement's conclusion, which is concluded in collecting and checking of data, documents and items for their use as proofs with purpose to ensure lawful rights and interests of clients [7, p. 108-109].

Thus, conclusion of an agreement to individual or legal entity (it is possible to their representatives) on protection their rights and interests at certain time interval and certain volume is determined by us like beginning of the first stage of lawyer investigation.

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We will make a reservation that we are talking about lawyer inquiry like criminal procedural activity, and not separate one-off actions in form of consultation, preparation of a complaint, petition etc., though in number of cases it is also necessary to collect and check data (information) for that.

Consequently, the systemic elements of lawyer investigation are the temporal stages its conduction, which is defined at conclusion of an agreement with client in dependence on the nature of assignment.

Current stage of criminal proceedings also plays a substantial role but only in the case if criminal process has been already begun.

However, it is possible situations, when client is addressed to lawyer, not having any procedural status, when criminal process, according to the notions of the Code of Criminal Procedure (hereinafter, the CCP) does not exist yet, criminal case has not been initiated and even pre-investigative checking is not carried out. Typically, this happens if a client, knowing his issues and their legal perspective, wish to be ready in advance to defence, being afraid to lose the proofs or to be subjected to tendentious criminal prosecution.

There might be objections that in these situations criminal procedural activity is not conducted by lawyer, as there is no criminal process in notion of Article 7.0.3 of the CCP of Azerbaijan Republic, and there is no criminal case.

In our standpoint, this is wrong as mentioned activity of a lawyer fits into pre-trial production in stage of message check on committed or prepared crimes and it is not important who began it first. Otherwise, an essence of the defence is diluted, under which is understood not only protection (defence) from brought accusation but also preparation for protection of possible charge.

The same is if lawyer comes into a civil process as a representative, and the process would grow into criminal one, this does not exclude an opportunity to use in criminal proceedings the materials (proofs), which were collected by the lawyer in order of civil (administrative) proceedings.



Thus, we may summarize that the stages of lawyer investigation do not coincide with the stages of criminal proceedings; however there are certain correlations between them.

There is no unified point of view in legal literature concerning the notion and number of the stages of criminal proceedings. Most part of scientists believe the stage as reflection of forwarding movement of criminal case, which, in our standpoint, seems to be wrong as in this case a period of time (stage) before its initiation is lost [1, p. 67-68; 4, p. 19; 6, p. 90].

It seems that a system of actions and decisions, which is the stage of proceedings, is characterised by specific tasks, participants, legal relations between them and issued documents that have temporal parameters of beginning and ending.

Successful attempt to distinguish the stages of pre-trial criminal production has been undertaken by Azerbaijani scientists, on basis of which we, in turn, will try to correlate the results received with lawyer inquiry [5, p. 48-70].

First stage begins from receiving of message (information) by the agency, which carries out criminal process (see Art. 7.0.5 of the CCP) about committed or prepared crime. In the notion of Article 7.0.3 of CCP there is no yet criminal process as such, consequently, we should talk precisely on the agencies of inquiry, investigation, prosecutor's office and courts, in production of which the message sends. The stage is completed with registration (documenting) of received message and given bureaucratic delays may take a few hours, but not more.

Lawyer does not participate in stated actions, however he may know about them, if he has concluded an agreement with a client.

As I.J. Jamalov notes, pre-trial production consisting of the stages, nevertheless, presents continuous process, completion of the first stage is the beginning of the second, completion of the second – the beginning of the third etc up to beginning of court production [5, p. 48-70].



However, such consequence is not seen during lawyer investigation.

The second stage of pre-trial production begins from registration (documenting) of a message about crime and completes with acceptance of it for checking by an executor. In dependence on nature of the message, at necessity to send it on investigative jurisdiction or court jurisdiction, this period of time might be accounted with minutes, hours, and sometimes it takes a few days, if registered message re-send by mail or in a remote area.

Lawyer does not participate also in this stage, but can collect (receive) information about it.

The third stage begins from reception of message about crime and completes on ending its checking. In dependence on nature of message its checking might be accounted by minutes, and with adoption of the last supplements and alterations in the CCP will be lasted up to 30 days.

Particularities of the third stage consist of the fact that in a number situations during of it might be applied a measure of procedural coercion – detention and it is appeared a procedural figure of suspected person, and a lawyer enters into the process with it.

The fourth stage of pre-trial production begins from completion of checking and ending with acceptance by an executor the decision of initiation of criminal case, refusal in it or sending the message (material) on investigative jurisdiction. As rule, in practice, if an executor is an inquiry officer or investigator then the decision is agreed in advance with a head of inquiry office or prosecutor, and in number cases with higher-ranking prosecutor, which is not regulated by the law, but guarantees from procedural and non-procedural production “cost”.

Adopted decision takes form with an order on initiation of criminal case, made in compliance with Article 210 of the CCP or an order about refusal in initiation of criminal case, adopted according to Article 212 of the CCP, which might be appealed by lawyer.



The fifth stage of pre-trial criminal production begins with adoption by an executor a decision on message about crime and is completed with its consideration (approval) by a head of an inquiry agency and prosecutors. If the decision approves then in dependence on its content on materials enter in force either an order about institution of criminal case and acceptance of it to production or an order on refusal in initiation of criminal case or message (materials) sends on investigative jurisdiction. Previously, for consideration of adopted by an executor the decision, an order on it with materials of checking is submitted to a head of inquiry office and prosecutor. After receiving of appropriate approvals, but not later, an applicant is notified concerning adopted decision.

If the decision is not approved and adopted order is revoked then a message (material): a) is returned for additional examination; b) is adopted an order about annulment of the order on initiation of criminal case and refusal in it; c) is issued an order about annulment of the decision in initiation of criminal case and initiation of criminal case.

Production is stopped when prosecutor adopts an order about refusal of criminal case, when a message sends for additional checking then the third stage continues, and at institution of criminal case it passes in the sixth stage, which begins with acceptance by an executor the case to production.

The sixth stage, which is a preliminary investigation in form of an inquiry including simplified pre-trial production on obvious crimes that are not great public danger or in form of preliminary investigation, continues before appearance of a suspected or accused person and defender lawyer in a case.

In case of non-confirmation of suspicions at this stage procedural figure of suspected person might be transformed in a witness or accused one. Lawyer-defender participates in active manner in course of these processes.



In some cases this stage is completed with adoption of an order on bringing of a person as accused, being passed the stage of suspicions in notion of the requirements of acting CCP, but not our suggestions.

In case if accused person is hidden or his location is unknown, the sixth stage is completed with making orders to search for and suspend proceedings on a case or it continues until his/her detection and detention, after that it begins the next stage of pre-trial production.

In our standpoint, the seventh stage must include an identification of accused personality, recording of participation a defender in a case, where a refusal from the latter should be recorded in presence of invited lawyer with appropriate order and completed with familiarisation of the person with content of the order about bringing as accused. It is certified with signatures of investigator, accused person and his defender in the order with indication a date and time of bringing of accusation and accused person's attitude to it (agreed or not agreed, admit guilt or do not admit etc.). In this case the process of signing (familiarisation) with orders will take much less time [2, p. 48-50].

However, the law (Article 224 of the CCP) says that after verifying the identity of the accused, the investigator shall inform him of the decision to prefer charges and explain the nature of the charges. The investigator and the accused shall sign the decision as confirmation of the formal announcement of the charges and its date and time. Defence counsel shall be entitled to attend the formal announcement of the charges [8, p. 234].

According to Article 224.3 of the CCP, investigator shall explain to the accused his rights and duties under Article 91 of this Code after charging that seem to be wrong.

In our standpoint, a defender should be permitted to the process from time of bringing a person the charges and to have the rights to participate in explanation



the person a core of bringing accusation, and also his rights and duties [3, p. 111-112].

Therefore, we believe that the beginning of the eighth stage is an issue of a record on permission to a defender to a case (participation of defender), and completion is a record's handing to accused person with participation of a defender a copy of the order on bringing as accused and written notification about rights and duties.

After that it begins the next, ninth stage, in which with participation of a defender an accused is informed about his rights and duties and a core of charges. This stage is completed with drawing of appropriate record, which is signed by all participants of this action.

The tenth stage is completed with interrogation of a person as accused one, before that in compliance with Article 233.9 of the CCP, an investigator explains an accused his rights to the assistance of defence counsel and to refuse to testify. It seems that if a defence counsel is participated at all previous actions, and interrogation of accused in compliance with Article 233.1 of the CCP should be conducted immediately after his accusing, the next explanation of the right to use assistance of a defender is unnecessary and might be understood as coercion to refusal of it.

According to Article 233.10 of the CCP, before interrogation an investigator should be ascertained whether or not an accused person pleads guilty to the charges against him. In our standpoint, this action should be conducted twice: at the seventh stage and before beginning of interrogation as after familiarisation with an order's content and consultations with a defender the position of an accused person might be changed.

Speaking about completion of an interrogation of a person as accused, we mean also drawing the interviewing record, signing of it by all participants of this investigative action.



In the eleventh stage of pre-trial production an issue on restraint measure is solved. It finalized with making appropriate order of investigator or court's decision satisfying or refusing in petition of investigator and presentation of prosecutor.

In the twelfth stage, before announcement an end of the preliminary investigation, is continued an investigation (conducted investigative and procedural actions, conditioned by the results of interrogation of accused person and requirements of the CCP in part of the completeness and comprehensiveness of investigation). Depending on the results of investigation at this stage may appear necessity to bring new charge, which is carried out with observance of the requirements of Articles 223, 224, 225 of the CCP.

Article 284 of the CCP says that being acknowledged the end of investigation; an investigator informs an accused, his defence counsel and other participants of the process about it. However, the law says nothing concerning drawing up an appropriate record on the end of investigation.

From our point of view, drawing of a record about announcement of investigative actions completion should be mandatory as from this moment the participants of production receive new rights and duties; it begins calculation of periods of time for familiarization with a case-file.

On motivated request of a defender of accused person, an investigator postpones familiarization with case-files for period up to five days, after that it is solved an issue concerning a defender's replacing.

The thirteenth stage includes a time of familiarization with materials of criminal case and is completed with drawing up a generalized "Record of familiarization with materials of criminal case" made in compliance with requirements of Article 286 of the CCP. If familiarization lasts a few days then records draw up every day. Records point out period of time of familiarization



(hours and minutes) and number of the case-sheets, with which have been familiarized accused and his defender, though the law does not provide that.

From the day of adoption on 10 October 2011 of the order of the Constitutional Court of Azerbaijan Republic that came into force on 1 March 2012, by which a period of time of familiarization with case-file included in period of time of detention in custody, have appeared issues, the decision of which, in our standpoint, has not found until now; of what we will talk especially.

The fourteenth stage begins with drawing up of a record on familiarization with case-file and completed with resolution of an issue on petitions of the participants of proceedings. If there are no petitions then it is noted in the record, after that begins the stage of drawing up an indictment. When petitions are submitted or will be presented in 48 hours period then it also is reflected in a record, after that it begins the stage of consideration of the petitions. In the case of appeal of the investigator's resolution about deviation of petition, it begins the next stage, and if the petition is satisfied then it follows the stage of familiarization with case-file. Further it is possible new petition etc., but stated problems have not been found its resolution in the law.

In particular, the law say nothing on an opportunity to submit petitions and complaints after familiarization with case-file in order of Article 288 of the CCP “Familiarization with materials of case-file after satisfaction of petition”, and also appearance of new 48 hours period of appealing, during of which a case might be sent with indictment to prosecutor etc.

It seems that all listed situations should be clearly regulated in the CCP, as the contrary is fraught with arbitrary interpretation.

After familiarization with case-materials it begins the stage of drawing up an indictment, time period of which is not specified in the law, and later the stage of consideration of the indictment by prosecutor, which according to Article 290.3 of



the CCP, should be resolved in five days, which also include in period of detention of accused person in custody.

In the stage of consideration of the indictment by prosecutor, the latter according to Article 290.3 of the CCP, might be accepted one of the next decisions: 1) confirm the indictment; 2) exclude individual counts from the indictment, alter the classification of the offence to a less serious one and confirm the indictment with these changes; 3) return the case file to the investigator with instructions to conduct an additional investigation or revise the indictment; 4) suspend the criminal proceedings; 5) discontinue the criminal proceedings [8, p. 291-292].

In addition, at this stage, prosecutor has the right to change a list of the persons who should be appeared in a court session.

In case of confirmation of the indictment, it begins the next and conditionally the last stage of pre-trial production on submitting a criminal case in a court. At this stage prosecutor, carrying out procedural administration by preliminary investigation, in written make clear to accused person and other participants of proceedings their right to submit in future the petitions and complaints to a court and notifies on submitting criminal case to a court. At the same time he has to provide an accused person and his defender with copies of an indictment and its appendices translated into a language defendant owns.

Pre-trial production is completed with transmission of the criminal case in a court, which is confirmed with appropriate accompanying letter, signature of the court's employers in receiving with indication of a date (time) and preferably with a stamp.

Abovementioned shows that there is no strictly defined sequence of the stage of pre-trial production. In some situations some of them have alternative nature, depending on circumstances pre-trial production might be completed at early stages or the stages might be repeated.



References

1. Aguldinov M.K. Ponyatie, printsipy, zadachi i sistema dosudebnogo proizvodstva [Notion, principles, tasks and system of pre-trial production]. Uchebnoe posobie [Teaching aid]. Kazan, 2011, 611 p.
2. Advokat v ugovnom protsesse: Uchebnoe posobie dlya vuzov [Lawyer in criminal process: Teaching aid for Universities] / Pod red. Prof. V.I. Sergreeva [ed. Prof. V.I. Sergeev]. Moscow, 2004, 351 p.
3. Advokatskaya deyatel'nost'. Uchebno-prakticheskoe posobie [Lawyer activity. Teaching aid]. Pod obsch. red. V.N. Burobina [Ed. by V.N. Burobin]. Moscow, 2001, 536 p.
4. Valdi M. Dosudebnoe proizvodstvo i istina [Pre-trial production and true]. Moscow, 2007, 306 p.
5. Jamalov I.J. Stadii ugovnogo dosudebnogo proizvodstva [Stages of criminal pre-trial production] /Juridical Sciences and Education. No. 42, 2014, pp. 71-107.
6. Korin A.I. Protsessual'naya forma [Procedural form]. Moscow, 2007, 317 p.
7. Mutallimov A.N. Kontseptual'nye osnovy advokatskogo rassledovaniya [Conceptual basis of lawyer investigation] / Juridical Sciences and Education. No. 53, pp. 108-116.
8. Ugolovno-protsessual'nyi kodeks Azerbajjanskoyi Respubliki [Code of Criminal Procedure of Azerbaijan Republic]. Po sostoyaniyu na sentyabr' 2016 [As for September 2016]. Baku, 568 p.