ISSN: 2455-3220
Volume 02 Issue 10
October 2016

Preliminary Hearing in Criminal Procedure of States-Members CIS

Rakhmonova Surayo Mahmudovna
Senior science researcher at
Tashkent State University of Law, PhD, Associate Professor

Abstract. Analysis of CIS countries legislation - in particular, the CIS countries, has a special significance, because along with Uzbekistan, they are all united common historical past and developed over many years of common political, economic and social interests.

It should be noted that all the newly independent post-Soviet republic in 1991, inherited a system of criminal procedure, which has developed on the basis of the continental European mixed form, originally appeared in France after the French Revolution.

All the fifteen former Soviet republics began intensive processes of reforming the legacy of the Soviet system. The legislators of these countries turned to the modern systems of criminal procedure in the Romano-Germanic legal family, which previously dominated inquisitorial process, such as Germany, France or Italy, as well as the controversial tradition of Anglo-American criminal proceedings. In Russia, for example, the legislator also drew attention to the royal system of criminal procedure and its Institute of the jury as an inspiration for his reforms, which began in 1992-1993.

Also seriously influenced by the International Covenant on Civil and Political Rights (ICCPR), the United Nations, which was ratified by all the former Soviet republics, and which takes precedence over the domestic legislation and the European Convention on Human Rights (ECHR), which was ratified by all the European republic of except Belarus, the provisions of which are almost identical to the provisions of the ICCPR.

Take an attempt on the detailed review stage stand trial accused of current CIS countries through the prism of a constructive implementation of national legislation for the optimal process of institutions and regulations.

In this light, an important place is occupied by the **Russian Federation** legislation, the historical development which mainly determined the major doctrinal trends in legislation today sovereign states.

The comparative legal terms modern Russian model of preparation for trial is closest to the German "intermediate production", when the issue of bringing to justice is decided by the judiciary, not an autonomous judicial body, and the same judge, who is competent in the future to consider a criminal case on the merits.

The classic Russian criminal process, there are two forms of the procedural stage of preparing the case

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

for trial: 1) The so-called "common procedure"; 2) a preliminary hearing.

The general procedure is the basic form of preparation for trial. This form is used as a residual, ie when there are no grounds for the appointment of a preliminary hearing.

In fact, the general procedure is a simple armchair form preparation for trial, a judge individually deal with all matters and take appropriate remedial solutions, without leaving his office, ie, without a special court hearing and without the parties. During the preparation for trial in a general way we face, perhaps, the least the procedural stage of the criminal process, where in fact there are no procedural forms and ceremonies.

This occurs as follows. Upon receipt of a criminal case in his court it takes to manufacture a particular judge who independently studying the case materials from the point of view of solving the issues referred to in Art. 228 Code of Criminal Procedure. If he sees no obstacles for the consideration of the criminal case on the merits, it simply makes a decision on the appointment of the judicial proceedings, and then orders the commission of the related preparatory actions (call participants to court, etc.). This in such a situation, the stage of preparation for trial and exhausted, and about her conduct demonstrates only remaining in the materials of the case the judge's decision on the appointment of the court session for the hearing of the criminal case on the merits1.

In the criminal procedure legislation of the Republic of Kazakhstan Institute provided a preliminary hearing. In 2014, the Criminal Procedure Code of the Republic of Kazakhstan have been introduced amendments that affected the norm, organize preliminary hearing procedure. Due entered in novellas law, a preliminary hearing is currently represented in the article 321 Criminal Procedure Code, and significantly transformed. Fair to say that the legislature is now still left out key gaps in the considered norm: an attempt to delineate the bases and conditions of the preliminary hearing; expanded and clearly established the list of crimes precluding the introduction of a motion of the defendant his case to a jury trial; also in the article is not the judge's decision to return the case for further investigation in the light of the failure of this institution; changes in the charges by the prosecutor at the preliminary hearing must now be submitted only in writing, etc.

In general, the Kazakh version of the preliminary hearing (except that it is even after the changes in 2014 several crumpled presented in an article) is responsible for the main stage set at the destination case for trial issues that are relevant legal consequences. However, it appears that as a preliminary hearing - is an alternative form of assignment of the

[1] Курс уголовного процесса / Под ред. д.ю.н., проф. Л. Головко. – М.: Статус, 2016. – С.768.

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

case to a court hearing, it deserves a more detailed presentation of constructive legislation in the structure.

In the criminal procedure legislation of the Republic of Belarus the appointment of the case for trial solved almost similar to the national law with the exception of some of the nuances.

So according to, Article 276 Code of Criminal Procedure, the judge entered the court a criminal case takes one of the following decisions:

1) to refer the case to another jurisdiction; 2) the termination of the proceedings; 3) to suspend the proceedings; 4) the appointment of the trial.

As he entered the court a criminal case the judge must find:

1) Is the case this court has jurisdiction;

2) whether there are circumstances leading to termination or suspension of the proceedings;

3) is subject to change or cancellation if applied to the accused preventive measure;

4) whether the adopted measures to ensure compensation for damage caused by the crime, and possible confiscation of property;

5) Are subject to the satisfaction of applications and petitions.

Drawing parallels between Article 396 of the Criminal Procedure Code of the Republic of Uzbekistan and Article 276 Code of Criminal Procedure should be noted that four issues to be clarified by the judge are identical in both matched standards. However, the rate of Belarusian rightly puts tasks before the judge to find out whether sufficient grounds for consideration of the case in court; It is met with the inquiry and preliminary investigation of the CCP requirements; composed if the indictment in accordance with the requirements of the Code of Criminal Procedure2. However, the last item on the consideration of applications and petitions made by the parties is essential at this stage of relations between the parties to the measure of the course of criminal proceedings. Note that such a national rule does not provide the powers of the judge.

The new Code of Criminal Procedure of the Kyrgyz Republic, which was enacted in 2011 provides for a procedure of appointing the case for trial in two forms, similar to the Russian legislation. In particular, article 244 of the Criminal Procedure Code of the Kyrgyz Republic providing for the powers of the judge entered the court proceedings confers on him the task of: 1) the definition of jurisdiction; 2) the adoption proceedings. In making the last decision the judge has the right to: appoint a preliminary hearing in the case of the consideration of a jury; suspend it; stop it on the grounds provided by law; to assign the case to trial.

According to Kyrgyz law, this decision must be made no later than fourteen days from the date of receipt of the case in court. Note that this term is twice the period, which is provided on the question of destination case for trial in the national legislation. According to article 245 of the Criminal Procedure Code, a

[2] Несостоятельность данных пунктов будет обзорно аргументирована далее в главе 3.

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

judge following questions should be clarified:

- Are not admitted during investigation violations of the criminal procedural law, preventing the appointment of the court session;

- Whether timely given a copy of the decision to bring charges;

- Is subject to change or cancellation if the defendant elected a preventive measure;

- Whether taken measures to ensure compensation for damage caused by the crime, and possible confiscation of property;

- Are subject to the satisfaction of applications and petitions.

In contrast to the Belarusian version of the Kyrgyz norm puts before the judge the task to identify the violations committed during the investigation and the gaps3.

Given the fact that all other issues are identical, you should pay attention that this rate is regulated by a separate question stated by the parties petitions and applications. So, in the resolution of applications and the judge has the right to call for an explanation of the person or representative of an organization to make a request. Motions to summon additional witnesses and the admission of other evidence to be satisfied, if they are relevant to the case. Such a procedure is observed in the domestic legislation in preparation of the trial.

At the optimum resolution of the issues raised, the judge makes a decision on the appointment of the court session, a preliminary hearing on the case of a jury. It should be noted that the institution of a preliminary hearing in the Criminal Procedure Law of the Kyrgyz Republic only in cases stipulated by jury. And seems to be the existence and implementation of a preliminary hearing in the legislation of the country is most likely a tribute to the new format of the justice of the procedure by jury, rather than an alternative form of procedural assignment of the case to trial.

Without interest and experience in dealing with this issue in the legislation of the Republic of Moldova. The Code of Criminal Procedure of the state form of assignment of the case to a court session is called a preliminary hearing. Thus, according to article 345 of the CPC of Moldova, the following issues are addressed in the preliminary hearing:

1) the applications and petitions, as well as the stated challenges;

2) a list of evidence to be presented to the parties in the trial;

3) the transfer of the case in accordance with its competence or, as appropriate, full or partial termination of the proceedings;

4) suspension of the proceedings;

5) Appointment of the trial period;

6) the preventive measures and protection measures.

[3] Однако в последующих нормах нет четкого механизма реагирования на допущенные следствием ошибки. То есть, данное полномочие судье не доведено до своего логического конца.

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

"Alive", have feedback issues here are only the first two points. It is in the discussion and resolution and is a preliminary hearing. In particular, the resolution of claims, petitions and objections received from the parties at the preliminary meeting, the parties state their opinion on the matter. In the case of deviations statements, petitions and outlets such may be fed again in the hearing in the proceedings (art. 346 Criminal Procedure Code of the Republic of Moldova).

The parties are obliged to submit to the preliminary hearing the list of evidence that they are going to explore in the course of the proceedings, including those that were not investigated in the course of criminal proceedings. A copy of the list of evidence submitted by the court, the party presents necessarily opposing party. Civil plaintiff and civil defendant handed over a list of evidence relating to the civil suit. The court, after hearing the opinion of the Parties present, decides the question of relevance to the case presented in the list of evidence about which of them should be represented in the proceedings. However, when considering the merits of the one or the other party may request the resubmission of evidence accepted at the preliminary meeting is not relevant. Thus, we can conclude that at the preliminary hearing stage in terms of the active participation of the parties and addressed the key defining issues of the further course of the case. In our view, form business purpose stages of such a structure (excluding some nuances) is optimal.

The Criminal Procedure Code of Azerbaijan Republic (14 July 2000), Institute provides preliminary hearing, calling it "The preparatory meeting of the court."

Due to the fact that the structure of the Azerbaijani criminal procedure is quite the volume (because it includes also the regulation of the further course of affairs of the private order and summary proceedings), and consists of numerous items and sub-items, in-depth analysis of a separate article it is very difficult. In view of this, we subject the study of some interesting key provisions of the article to us.

Thus, according to Art. 299 Code of Criminal Procedure of the Republic of Azerbaijan, a preparatory meeting of the court consists of a preliminary hearing to test the possibility of appointing a hearing on the merits accusation in a criminal case, the simplified pre-trial proceedings or the complaint of a private prosecution, involving the parties of criminal proceedings.

In each case, in the preparatory meeting of the court with the participation of the parties addresses the following questions: Does the jurisdiction of the court a criminal case received by him, the simplified pre-trial proceedings or complaint to a private prosecution; It has been violated requirements of the CPC during the preliminary investigation; whether the complaint meets the content of a private prosecution with

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

the relevant articles of the CCP; whether there are grounds for suspension or termination of the criminal proceedings; whether there are grounds for the election, change or cancel a measure of restraint in the criminal case; whether there are grounds for trial on criminal charges of grave or especially grave crimes by jury.

During the preparatory meeting of the court also allowed the following issues: the satisfaction of the declared petitions and taps or the rejection of their application; on the list of the evidence presented by the parties during the trial; about elimination of the proceedings inadmissible as evidence material.

It should be noted that article 299 of the Criminal Procedure Code of the Republic of Azerbaijan covers the grounds, conditions and preparatory hearing procedure carried out until the sequence of action on it. Such detailed ordering ambiguous, since on the one hand simplifies the algorithm judges action, and on the other hand requires only operate within a given vector norm from it. This design standards are not very consistent with the analogue in our legislation. however, following the norm, that is, Article 300. "Types of decisions taken by the court as a result of the preparatory meeting of the court" is logically completes the preliminary hearing, responding to every consideration during his question. Deserves special attention and the last paragraph of the article points to the possibility of appeal to appeal or protest, the judge on the preliminary hearing solutions (note that this option is not present in more than one similar norm of other countries).

The Criminal Procedure Law of the Republic of Turkmenistan (adopted in 2010). Unlike the Azerbaijani and Kazakh legislation dedicated preliminary hearing as much as 6 articles (Articles 331-337 CCP). The Turkmen Criminal Procedure Code of the institution is called a status conference the Court (identical to the form of committal for trial by the Criminal Procedure Code Uzssr 1959).

It is important that in these articles clearly defined general conditions for the status conference: the composition of the court in an administrative hearing; Participation of the prosecutor in administrative session; administrative order of the court session; the judge's ruling and determining the administrative session of the court; the appointment of the trial of the accused in an administrative meeting. According to Art. 330 Criminal Procedure Code of the Republic of Turkmenistan, a prerequisite for administrative session is the following facts established by the judge. In cases involving crimes committed by minors, in cases of a judge disagrees with the conclusions of the indictment, the victim's reconciliation with the accused in cases brought on the basis of the victim's complaint, or if you need to change the preventive measure applied to the accused, the suspension

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

of the proceedings, the direction of the case on jurisdiction, the prosecution conducted a status conference the court. Thus, administrative court hearing is some alternative procedure carried out by the judge in the case not only to establish the facts preventing the case in the main trial.

Detail is ordered in the law and the prosecutor's participation in the administrative session. At the status conference the prosecutor of the court takes part, formally acting here as a public prosecutor. At the same time, the prosecutor gives here the conclusion and not the right to refuse at this stage of the maintenance of public prosecution, since he has the right to drop the charges in full or in part, only if it comes to the conclusion that it was not confirmed in the proceedings. This indicates that the tradition of the court in criminal proceedings of Turkmenistan has not controversial and forensic auditing form in which the decision depends entirely on the court instead of the positions of the parties. However, it appears that the prosecutor shall have the right, without giving up the charges, change it to this stage, adding qualifications to the side favorable to the accused (if it does not entail a change in the actual prosecution), including the deletion of the qualification of the crime on individual articles of the criminal law , exclude certain charges indication of the facts (but not whole episodes, as this would be tantamount to a partial rejection of the charges). However, such a change in the charges the prosecutor does not bind the Court, and does not make it compulsory to appoint a trial of the case on a new charge. In case of disagreement with the change of the public prosecutor on charges less serious or exception to the indictment indicate certain factual circumstances, the judge, although not being entitled to independently restore the previous charge, must resolve the question of the case back for further investigation. If the court agrees with the change of the charges by the prosecutor, it is, nevertheless, in its decision can not be limited to only one reference to the change of the charges by the prosecutor, and he is obliged to motivate this change (the obligation in writing to substantiate the need for the prosecution changes the responsibility of the public prosecutor and the Kazakh similar norm).

As a result of the status conference the judge makes the following definition: the appointment of the trial of the accused; to return the case for additional investigation; on the termination of the proceedings; on suspension of the proceedings; to refer the case to another jurisdiction; the merger of criminal cases. However, h. 3 tbsp. 330 Code of Criminal Procedure, which states the grounds for not mentioned for the status conference the decision to dismiss the case, which should be considered as a gap in the law. As for the association of court cases in the same industry, the adoption of such a decision by the court in general, and

in this step, especially, is extremely problematic. The fact that the compound of affairs always means a change or addition to the charges, which therefore needs perepredyavlenii the accused, and this is possible only when the case was referred for further investigation (Art. 1, Art. 361 Criminal Procedure Code of Turkmenistan).

Article 337 Criminal Procedure Code of the Republic of Turkmenistan is another proof that bringing to justice here has only forensic auditing form. So, the question to be clarified in the case entered the court, consisting of 14 points are more like questions, it appears the prosecutor prior to the approval and direction of the criminal case to the court. Of particular interest is addressed to the court requirement clarify the question of whether all the face when there is reason to criminal responsibility (para. 7 of Article 337 of the Criminal Procedure Code), practically means holding court at this stage of a counterpart further investigation, which is hardly practicable and effectively.

In addition, it means laying on the court uncharacteristic prosecution function. Therefore, this provision seems at odds with the principle of adversarial proceedings established by Art. 105 of the Constitution and Art. 22 Code of Criminal Procedure of the Republic of Turkmenistan4.

However, it is encouraging that the consideration of petitions in the Turkmen settled law identical to the rest of the foreign legislation discussed above. In particular, Art. 338 Code of Criminal Procedure states that the court in administrative session within its competence, shall consider the available applications for admission to participation in the case, the future direction of the case to another court for the recovery of additional evidence5, to change the preventive measures of a civil suit and measures to ensure it.

The Criminal Procedure Code of the Republic of Tajikistan Institute of the preliminary hearing is not the case. Stage assignment of the case to the trial in the Law of the Republic is very similar to the national counterpart. It also entered into the court a criminal case the judge must find out: whether the case this court has jurisdiction; whether there are circumstances leading to termination or suspension of the proceedings; Do not admitted at the inquiry and preliminary investigation violations of the criminal procedural law, preventing the appointment of the court session; whether copies of the indictment or the decision to institute criminal proceedings on the

[4] Комментарий к Уголовно-процессуальному кодексу Туркменистана. Постатейный / Под общ. ред. проф. А.В. Смирнова. 2011.

[5] Суд обязан разрешать здесь и ходатайства о признании недопустимыми тех или иных доказательств, т.к. в соответствии с ч. 2 ст. 125 УПК Республики Туркменистан недопустимость использования фактических данных в качестве доказательств, а также возможность их ограниченного использования при производстве по уголовному делу определяются органом, ведущим процесс, по собственной инициативе или по ходатайству стороны.

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

accelerated production; It is subject to change or cancel the application in relation to the accused preventive measure; Whether taken measures to ensure compensation for damage caused by the crime, and possible confiscation of property; It is subject to the satisfaction of applications and petitions (art. 262 Criminal Procedure Code of the Republic of Tajikistan).

The main difference in these matters lies in the fact that the Tajik legislator besides acting earlier control and validation judicial actions included in this list is the duty of the judge to check the maintenance of the rights of the accused, following the completion of the criminal case, as well as the rights granted to him in view of the introduction of the new institute accelerated production. Another important point is the provision of court before the main trial rights of the parties to submit petitions. That is, there is a "crossover" of the earlier court powers that put him in control and audit position and authority to ensure at least partial adversarial proceedings on the appointment of the stage for the court hearing. However, we note that in comparison with the business purpose stage in the Republic of Uzbekistan does not provide for any examination of requests made by the parties, the Tajik model is still one step ahead.

Another important advantage of the Tajik legislation lies in the fact that the closest national norm formulation of judicial authority to enroll in a court case, it provides for the return of the case for further investigation is the case with the appointment of the stage for the trial rather than the main hearing. Thus, in contrast to our own, in our view, inconsistent progress of the criminal case, with the possible prospect of the return of the case to the previous step of the court session, the Tajik variant course of criminal proceedings most logically justified as a feedback in terms of the legal consequences of the judicial authority. It is necessary to pay attention to the fact that the only basis for further investigation of return cases under the laws of the Republic of Tajikistan is a substantial violation of the criminal procedure law at the trial (art. 264 Criminal Procedure Code).

Criminal procedure legislation of the Republic of Armenia in 1998 as well as the Criminal Procedure Code of the Republic of Tajikistan does not provide for the preliminary hearing institute proceedings but in deciding the destination of the case for trial has a number of features.

It seems that the Armenian legislation has incorporated all the elements from both the old and the new approach of solving the considered stage of the criminal process.

So, for example, Article 292 "Decisions made in preparing the case for trial" of the RA Criminal Procedure Code states that the judge who took the criminal to his production explores available in materials and within 15 days of the adoption of the criminal case to the

their production makes one of the following decisions: the appointment of the trial; on the termination of the criminal proceedings or to terminate criminal proceedings; on the suspension of criminal proceedings; on the return of the prosecutor of the case; on the return of the criminal case for additional investigation; to refer the case for jurisdiction; for rejection. If we draw parallels between the Russian and Kazakh Code of Criminal Procedure, which refused to return to the Institute for further investigation in favor of the case to the prosecutor areas (art. 323 Criminal Procedure Code, st.327 Code of Criminal Procedure) is not very clear the position of the Armenian legislator, predpochetshego without abandoning further investigation in overall implement also the refund case to the prosecutor! However, it is worth noting that these two return are different in that the prosecutor (prosecutor) the case is returned in case of discrepancy of the indictment as required by law and for further investigation in the case, when the bodies of inquiry and preliminary investigation allowed substantial violations of the criminal procedure law, which can not be eliminated in during the trial. It should be noted that the wording of the grounds for further investigation is identical to paragraph 2 of Section 419 Criminal Procedure Code of the Republic of Uzbekistan! In our opinion, the Armenian legislator should still choose a unified position on the issue of the return of the prosecution case in the face of the accuser.

It is also logically very clear design rules on the appointment of the trial, which does not indicate the issues resolved by the court for enrolling in court criminal cases oblige the judge to specify in the decision on the appointment of the proceedings apart from the current organizational issues important issues such as: decision on the statement of the petitions , taps and other applications; a decision on the admission as an advocate for the person elected or appointed by the accused as the last defender. How does the judge decide these issues alone, without the participation of the parties to the same regulation, without the associated procedural powers ?!

Thus, based on the analysis of the functioning of the preliminary hearing in the Institute of the CIS countries, we can conclude that the essential features of this procedure are the following:

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;

3) activities aimed at the resolution of the court on the substance of the issues that gave rise to a preliminary hearing;

4) Initiative to conduct a preliminary hearing, the subject and scope of the meeting was originally restricted by law or the subjective will of the parties;

5) during the preliminary hearing, the parties may discuss the

ISSN: 2455-3220
Volume 02 Issue 10
October 2016

adequacy 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 legal requirements;

6) at the preliminary hearing becomes clear whether the meeting deserve filed applications and petitions of the parties in the case;

7) A preliminary hearing is completed judicial decisions - decisions.

In view of the above reasons, we conclude that the inclusion in a national system of general-purpose case for trial institute 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 parties to criminal proceedings, the form of the implementation of the adversarial principle in the administration of justice at this stage of the criminal proceedings.