

Comparative analyze institution of inquiry (USA, Swiss, Germany, Republic of Uzbekistan)

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Annotation: *In this article given emphasis on a critical analysis of the existing order of inquiry and by scrutiny of foreign experience put forward constructive suggestions to improve the procedural position of the inquiry man and the institution of the inquiry as a whole.*

Key words: *criminal procedure, criminal case, the inquiry, the investigator, the pre-trial stages.*

A pre-trial proceeding is an essential part of criminal proceedings of each State. From its effectiveness depends largely on the legal fate of the criminal case and the fate of appearing in the case of persons. The effectiveness of pre-trial proceedings is determined by the quality of its regulatory framework. The latter, in turn, largely depends on the correct conceptual understanding of the essence of the original ideas that make up the methodological and ideological basis institutes a criminal case and preliminary investigation¹.

There is no clear understanding of the field of action and general conditions. In the theory of criminal procedure appear at least three objects: a preliminary

investigation, preliminary investigation, pre-trial proceedings. These objects are by their nature and define the specificity of their respective concepts of the general conditions.

According to the just remark of the French comparatives R. David valid conclusions in law can be made with complete clarity, but if you look at the problem from the outside, to go beyond its own legal system². Without exaggerating the importance of international criminal procedure, we note that they contain a lot of valuable scientific ideas that are useful to discuss within the framework of the domestic legal doctrine.

The body of inquiry is an essential participant in the domestic criminal proceedings for several centuries. The history of this body knows the existence of many reforms that directly or indirectly affect both its procedural status, and on the theoretical understanding. The last major changes were due to radically upgrade the domestic criminal procedural law. Analysis

¹ Р.Р. Шайхулов Общие (принципиальные) условия досудебного производства : автореф. дисс. ... канд. юрид. наук: Нижний Новгород, 2007. С.7.

² Давид Р., Жоффре-Спинози К. Основные правовые системы современности. М., 1997. С. 20.

of the Criminal Procedure Code of the Republic of Uzbekistan shows that in respect of the bodies of inquiry, conceptual changes. Legislator repeatedly attempt to improve the system of the bodies of inquiry and significantly change the other rules relating to the inquiry as a whole. In addition, the Code of Criminal Procedure of the Republic of Uzbekistan serious procedural transformed shape a body of inquiry, highlighting and isolate those involved in criminal proceedings, as the head of the body of inquiry and the head of the body of inquiry unit; fundamentally new legal content has received the investigator figure. Significantly been corrected view of the possibility of criminal procedure the use of results of operatively-search actions, including in the process of inquiry. And these changes have taken place simultaneously with the transformation of the legislative procedure itself criminal complaint, to cast doubt on a number of immutable earlier theoretical systems.

For optimal understanding of the legislation introduced in the stories, as well as the identification of new trends in the field of criminal justice it seems appropriate to analyze the foreign practice of the inquiry.

Detect and analyze current trends in the development of criminal justice allows new and yet historically the first single of

the CPC of Switzerland, adopted in 2007 and entered into force in 2011. The Code is the result of the labor of hundreds of experts and embodies the modern conceptual basis of the inquiry and preliminary investigation (Swiss criminal procedure code of 5 October 2007 (status as of 1 January 2015)).

Organization of pre-trial stages of the criminal process in this country is of great interest for research due to the fact that it has not yet received a proper assessment by the domestic doctrine.

It is important to note that in Switzerland, among other literature vdelyayutsya two fundamental comments to the new Criminal Procedure Code of the country (Zurich and Basel):

The volume of each of them exceeds 2000 pages. They are the authors of more than a hundred scientists, including of judges, prosecutors, professors of education. Many of them participated in the development of the CPC 2007. In these works extensively disclosed problems in the theory, practice and history of criminal proceedings in Switzerland. Considerable space is devoted to comparative jurisprudence and the experience of other European countries³.

Differentiation of inquiry and preliminary investigation in Switzerland is

³ <http://www.admin.ch/opc/de/classified-compilation/20052319/index.html>

characterized by the fact that they do not act as alternative forms of pre-trial proceedings, as well as a consistently reaching successive stage. At the same time as the inquiry, and in these cases, further preliminary investigation may have an optional character. However, at least one of these stages in the case of receipt of information about the crime to take place necessarily⁴.

Enquiry on the Swiss Code of Criminal Procedure, 2007. is the initial pre-trial stage of criminal proceedings, starting after receiving information about the alleged crime, during which the police interact with the prosecutor's office, having only a minor procedural autonomy, collects evidence, on the basis of which it is possible: a) the subsequent opening of the preliminary investigation, the prosecutor's office; b) refusal to open it connected or not connected with the publication of the punishment order⁵.

Advantageously, the sample, that is, the regulatory model legislation virtually all European countries has been historically the earliest codified law of criminal procedure in Germany in 1877. German normative sample, and to this day has a great influence on the development of legislation in Europe

and beyond. Because this is important to consider some aspects of the specificity of the German legislation in terms of the optimal implementation of the national legal system.

Thus, the most similar to the national system of bodies carrying out a preliminary investigation, a German system. The Ministry of Internal Affairs of Germany, as well as the Ministry of Interior of the Republic of Uzbekistan defines the general direction of police operations (police), which is divided into criminal and general political. By comparison, in contrast to Germany, the United States system of bodies carrying out a preliminary investigation of crimes is strongly differentiated, as central authority, endowed with traditional police functions, does not exist.

The main source of both German and domestic criminal - procedural law are the laws (Criminal Procedure Code), thus achieving regulatory certainty, the settlement of criminal procedure relations at the legislative level. In criminal proceedings, the United States has an important place to use precedent as a source of criminal procedural law.

Advantages of the system's case are seen in its flexibility. In contrast to the national system of legal regulation of investigation of crimes in these countries is

⁴ Hansjakob T., Lieber V. Kommentar zur Schweizerischen Strafprozessordnung (StPO). Zurich, 2010.

⁵ Donatsch A.; Niggli M., Heer M., Wiprechtiger H. Schweizerischen Strafprozessordnung. Jugendstrafprozessordnung. Basel, 2010.

a prescription openly published legislative and other legal acts. Therefore, such an approach to the definition of the legal regime of investigation of crimes is preventive in nature, because it is clear to every citizen, in what situations and subject to any operational search and investigative procedures, it can be in the case of wrongful conduct.

Also, as in the Code of Criminal Procedure of the Republic of Uzbekistan, the need to establish the truth in a criminal case it is recognized in the US as well as in the German criminal proceedings. In the US and Germany, as well as in the domestic criminal proceedings special attention is paid to the development of the rules on the inadmissibility of evidence obtained by unlawful means. In the legal systems of the United States and Germany, in contrast to the Republic of Uzbekistan has a special procedure for the adoption of a judicial decision with the consent of the accused the charges against him so-called institute of "plea bargaining." However, now in the theory and practice of the criminal process, the United States has developed an ambivalent attitude to the use of this institution.

The absence of the formal initiation of criminal proceedings in the United States and Germany, contributes to a more rapid and effective investigation of crimes.

Enquiry in these countries is a pre-qualified, which its content is comparable to the pre-investigation check, Code of Criminal Procedure provided for the Republic of Uzbekistan. The difference between them lies in the fact that the police are entitled to conduct investigative actions that under national law is possible only after the criminal case. A distinctive feature of the legislation of these countries in the investigation of crimes is its exceptional rationality, the desire to save manpower and resources, lack of duplication and overlap.

World practice of fighting crime long ago gave up trying to solve the problem of disclosure of each crime and achieving 100% solved. Practical implementation of this postulate has excluded interest in hiding the crimes of accounting, unwarranted transfer of unsolved crimes in the category of the disclosed and other manipulation of statistics.

During the preliminary investigation of crimes police USA and Germany, responsible for the duties to investigate crimes, the least involved in drawing up procedural documents and take care of the observance of procedural form. Transcript of interrogation of witnesses, victims, the suspect is a simple notes, sketches. However, in cases where police actions affect the interests of the citizens, they must be authorized by a judge.

These include such investigative actions as preventive arrest, searches and other investigative actions related to the restraint of personal liberty of citizens. Such an organization of crime investigation provides significant savings, rational use of energy and resources. It seems, in comparison with these countries in the Republic of Uzbekistan overly complicated mechanism for the implementation of the criminal law, which is not conducive to a speedy and effective investigation of crimes.

In conclusion, we carry out some final parallel between the German and national systems of pre-trial proceedings:

1. The judicial system of Germany, as well as the Republic of Uzbekistan, is built taking into account the territorial structure of the state. In Germany, criminal proceedings are mainly engage in the courts of land, as well as in the Republic, and Uzbekistan, where most of the criminal cases was considered by district (city) courts. In pre-trial proceedings in a criminal case, the investigating judge is involved in the Federal Republic of Germany, which at the request of the prosecutor's office makes own investigations. In contrast, in the Republic of Uzbekistan in the pre-trial court on their own investigations did not produce, but only makes a final decision on the production of certain procedural coercion. At the same time the production of

investigative actions by the investigating judge in the Federal Republic of Germany is not contrary to the principle of adversarial because it criminal case to its production does not accept and do investigative actions are performed with the assistance of the court hearing the representatives of the parties. In general, the role of the court in pre-trial proceedings in a criminal case in the Federal Republic of Germany is more significant.

2. The Prosecutor's Office of Germany is the only body of criminal prosecution. Its functions are exhausted by participation in criminal proceedings and, in contrast to the national legislation, does not require general oversight functions over the activities of the entire system of executive power. This differs from the German prosecutor Uzbek counterpart, which in addition to prosecution and carries out supervisory functions. In addition, the prosecutor, on the domestic procedural law is not the only member of the pre-trial, representing the organs of the state. The prosecutor's office in Germany is the body of inquiry and the prosecutor's domestic situation not excluding the inquiry functions (department) still assumes and supervisory and investigative functions simultaneously, while limiting the participation of the investigating judge in pre-trial proceedings makes inquiry only form of preliminary

investigation in Germany. In general, the prosecutor's office of the Republic of Uzbekistan is not a body of inquiry and preliminary investigation stage includes the inquiry, the list of bodies which carry out its clearly demarcated by law. Investigators prosecutors in the Republic of Uzbekistan belong to bodies of preliminary investigation, not provided for in the German prosecutor's office investigator positions.

3. Police in Germany, in contrast to the police in the Republic of Uzbekistan, is not included in a wider system of internal affairs bodies. German police, in contrast to domestic law-enforcement bodies, is not a body of inquiry. It only takes part in the inquiry under the supervision of the prosecutor's office. The officials of the police, the prosecutor's office which are utilized during the investigation, the prosecutor's office considered subsidiary employees. In practice, in many cases, the police is conducting its own investigation in full and submit the materials to the prosecutor's office the case to institute public prosecution or to dismiss the case. In addition, the police broad powers granted by the general and special prevention of crimes, some of which are inherently operatively-search actions.