

THE PROCEDURE FOR CONDUCTING A PRE-INVESTIGATION CHECK ON THE FACTS OF HARM TO HUMAN HEALTH BY MEDICAL WORKERS

Камилджанов Сарвар Шухратович

магистрант Академия правоохранительных органов при Генеральной прокуратуре Республики Узбекистан, г.Ташкент, Узбекистан

ANNOTATION

The article conducts a study of problematic issues related to the conduct of a pre-investigation check on the facts for improper provision of medical services or medical care, resulting in harm to human health or death, the procedure for conducting and, of course, collecting the necessary basis for the final decision-making or initiating or refusing to initiate. Also, the article notes the painstaking procedure for conducting a pre-investigation check on the above facts and, accordingly, the lack of time to make a final decision, while a forensic medical examination is appointed.

Keywords: pre-investigation check, investigative actions, terms, specialists, expertise, experts, medical history, protocol, documents.

The pre-investigation check includes measures to verify statements, reports and other information about crimes, making a decision based on the results of their consideration, as well as measures to consolidate and preserve traces of the crime, objects and documents that may be relevant to the case.¹

One of the main conditions for compliance with the law in criminal proceedings is timely and informed decision-making. However, on the way from identifying the corpus delicti to bringing a person as a defendant in a criminal case, law enforcement officers carry out a huge amount of work, a positive result, which is most often determined at the initial stage of the criminal process. The activities of the procuratorial authorities upon receipt of an application or report regarding harm to human health by medical workers are provided for by the Code of Criminal Procedure of the Republic of Uzbekistan, the Law "On the Procurator's Office" and other regulatory legal acts.

The purpose of the pre-investigation check is to establish the sufficiency of data, information and facts indicating the reliability of the arguments specified in the application, and ultimately to make a legal and reasonable decision.

Some scientists from the CIS gave the concept of pre-investigation, preliminary) verification in different ways, for example, L.A. Savina, implying by it the activities of the competent state bodies and officials authorized by the criminal procedure legislation, based on the law and by-laws, aimed at establishing the reliability of the information contained in the message about the presence of signs of a crime in the event and collecting additional information,

¹ Code of Criminal Procedure of the Republic of Uzbekistan. National Database of Legislation of the Republic of Uzbekistan, 22.09.1994, <http://lex.uz/uz/docs/111463>

characterizing this event, which are necessary for making a lawful and reasonable procedural decision on the application or message received².

Structuring the content of the preliminary check and not limited to the collection of additional information, A.N. Ilyin believes that it is necessary to understand the process of receiving and registering information about an alleged criminal event, identifying factual data indicating signs of a crime, as well as collecting additional information about the traces of a criminal event and its other signs necessary for the adoption of the envisaged criminal procedure legislation of the decision on the report of a crime³.

It is difficult to question the need to distinguish these stages, since the procedural activity at this stage begins from the moment of registration of a report of a crime and ends with the adoption of one of the decisions provided for in Article 330 of the Code of Criminal Procedure of the Republic of Uzbekistan, for the issuance of which (decision) it is necessary to establish the presence or absence of elements of the corpus delicti.

Pre-investigation verification is the process of establishing the initial facts and information whether there is corpus delicti or not. A pre-investigation check can be carried out in various areas, embezzlement or embezzlement of funds, compliance with standards in the construction of social facilities, compliance with budget legislation, death by negligence, facts of missing people, finding an unknown corpse, etc.

The specificity and establishment of truth and facts on the above circumstances are different, law enforcement officers in the course of conducting a pre-investigation check choose various ways of verification at their discretion within the framework of the established norms of criminal procedure legislation.

In particular, the following issues are considered in the analyzed stage:

- whether the report of an impending or committed crime is a legitimate reason for initiating a criminal case;
- whether the facts about which information was obtained from the report of the crime contain signs of a crime;
- under which article of the criminal law the crime can be qualified;
- on the basis of what specific data it is recognized that the facts about which the information was received actually took place;
- whether, in the circumstances of the crime, an inspection of the scene of the incident should be carried out;
- whether there is a need for a pre-investigation check and, if so, what verification actions should be carried out;
- whether this body and a specific official have the right to resolve the issue of initiating a criminal case, or whether the available materials on the crime are subject to transfer to the investigative jurisdiction or jurisdiction;
- whether the circumstances preventing the initiation of criminal proceedings have been established;

² Savina L.A. Organization and tactics of preliminary verification of reports of economic crimes in railway transport: author. Dis.Cand. jurid. Sciences. Moscow, 2005. P. 8.

³ Ilyin A.N. Tactics of preliminary verification of a crime report: author. dis. ... Cand. Legal. Sciences. Moscow, 2009. P. 9.

- whether there are grounds for refusing to initiate criminal proceedings;
- Who, in accordance with the law, is authorized to conduct an inquiry or preliminary investigation in the event of the initiation of criminal proceedings;
- what measures should be taken by the judge to reconcile the applicant and the person against whom the complaint is filed with a request to initiate a private prosecution case;
- what measures should be taken to prevent or suppress the crime, as well as to consolidate the traces of the crime, including in the case of sending materials to the investigative jurisdiction or jurisdiction.

At the stage of consideration and resolution of reports of a crime, a wide range of actions are committed, giving rise to a whole system of criminal procedural relations, the subjects of which are the applicant for the crime (citizen, official of an institution, enterprise or organization), the body of inquiry, the person conducting the initial inquiry, the investigator, the prosecutor, as well as representatives of the public and other citizens.

Meanwhile, it is quite obvious that all actions, as well as the criminal procedural relations arising in connection with them, are somehow regulated by the norms of criminal procedure legislation and are characterized by the commonality of the specific task being solved. Therefore, the assertion that the stage of consideration and resolution of reports of a crime is reduced only to the issuance of a decision to initiate or refuse to initiate criminal proceedings is theoretically groundless, but in practice harmful and in contradiction with the current criminal procedure legislation.

During the pre-investigation check, there are a limited number of activities for research. According to Article 329 of the Code of Criminal Procedure of the Republic of Uzbekistan, additional documents and explanations may be requested, as well as the detention of a person, a personal search and seizure in accordance with the second part of Article 162 of this Code, an inspection of the scene of the incident, an examination, an audit may be appointed, instructions may be given to carry out operational-search measures. Other investigative actions may be prohibited during the pre-investigation check.⁴

As noted above, causing harm to human health by medical workers is a specific direction, for conducting a pre-investigation check, it is necessary to attract specialists or experts with professional knowledge.

In the course of the study, the materials of the pre-investigation check on the fact of maternal death and death of newborns were studied. Thus, according to the data, in 2020 there were 10 maternal deaths and 322 neonatal deaths, 10 maternal deaths in 2021, 334 neonatal deaths, and 8 maternal deaths and 266 newborn deaths in 2022. In all these cases, the prosecutor's office of the districts of the city of Tashkent conducted pre-investigation checks.

Thus, according to the Order of the Prosecutor General of the Republic of Uzbekistan dated 11.09.2017, to ensure that a pre-investigation check is carried out in all cases of maternal, child death and death of a child under one year old in maternity hospitals and, based on the results of inspections, to give a legal assessment of the actions of medical workers.⁵

⁴ Code of Criminal Procedure of the Republic of Uzbekistan. National Database of Legislation of the Republic of Uzbekistan, 22.09.1994, <http://lex.uz/uz/docs/111463>

⁵ Order of the Prosecutor General of the Republic of Uzbekistan dated 11.09.2017 No. 139 "On improving the effectiveness of control over the implementation of legislation on minors". Cm. p.3.3

On the part of the prosecutor's office of the districts of the city of Tashkent, during the pre-investigation check, 95% of cases appoint an official check on the actions of medical workers and appoint mainly to the city health department of Tashkent, and the remaining 5% of cases send letters about the involvement of a specialist for a legal assessment of the fact of death, and these letters are also sent to the city health department of Tashkent. These actions are aimed at obtaining a legal assessment of the actions of medical workers, i.e. assessment of the quality of medical care, the correct diagnosis, whether there is a collection of tests, whether the patient has undergone certain checks, the procedure for providing medical care, compliance with standards of medical care and clinical guidelines (treatment protocols), etc., in this regard, without special knowledge and conclusions of a specialist, it is impossible to come to a single decision.

The approach to the treatment and reporting of harm to human health by medical workers, by employees of the prosecutor's office is different. In many cases, these appeals are registered as a statement of a crime and a pre-investigation check is carried out, some of them during consideration, i.e. after receiving the conclusion or act of a specialist in treatment, if there are certain shortcomings or violations in the actions of a medical worker, then the application is registered as a report of a crime notifying the applicant about it.

In this case, the methodology for conducting a pre-investigation check for harm to health by medical workers by employees of the prosecutor's office of the city of Tashkent is different. Some choose to appoint an internal investigation, while others prefer to involve certain specialists and, with access to the site, check whether there are medical errors, shortcomings or violations.

It must be admitted that Part 1 of Article 329 of the Code of Criminal Procedure of the Republic of Uzbekistan does not specify the above-mentioned measures, i.e. the appointment of an official investigation or the involvement of specialists. Only an official investigation is specified in paragraph 1 of part 3 of article 329 of the Code of Criminal Procedure of the Republic of Uzbekistan as the basis for extending the period of the pre-investigation check.

In a general sense, Article 391 of the Code of Criminal Procedure of the Republic of Uzbekistan states that the bodies carrying out the pre-investigation check are responsible for taking the necessary measures, including the use of scientific and technical means, in order to detect signs of a crime and the persons who committed it, to identify data that can be used as evidence in a criminal case after they have been verified in accordance with the rules of this Code⁶.

In the course of conducting a pre-investigation check on the fact of the death of a patient or causing harm to human health by medical workers, other actions specified in the Code are also carried out, such as requesting additional documents, taking explanatory notes, inspecting the scene of the incident and appointing an examination.

As a general rule, investigative actions (as having a coercive nature) are not allowed before a decision is made to initiate criminal proceedings. This is due to the need for a balanced application of procedural coercive measures, while the general condition for their application is precisely the presence in the act of data indicating the signs of a crime.

⁶ Code of Criminal Procedure of the Republic of Uzbekistan. National Database of Legislation of the Republic of Uzbekistan, 22.09.1994, <http://lex.uz/uz/docs/111463>

As noted, the death of a patient or harm to human health due to the fault of medical workers is quite time-consuming and multifaceted and, of course, requires some time.

In the course of the pre-investigation check, after certain measures and investigative actions have been taken, it is necessary to appoint a forensic medical examination, to give a final expert and legal assessment.

Thus, an examination is appointed in cases where information about the circumstances relevant to the case can be obtained with the help of a special study conducted by a person with knowledge in the field of science, technology, art or craft. The presence of such knowledge by an official of the body carrying out the pre-investigation check, the person conducting the initial inquiry, the investigator, the prosecutor, the judge, specialists, witnesses does not exempt from the need to appoint an examination.⁷

In practice, in the course of conducting a pre-investigation check on an application for harm to health or death of a person through the fault of medical workers, at the request of the branch of the Republican Scientific and Practical Forensic Medical Examination of the city of Tashkent, a forensic medical examination is appointed, since here it is necessary to give an expert and legal assessment of the actions of medical workers.

A routine forensic medical examination is appointed upon the death of a person, as well as to determine the degree of bodily injury in a living person.

Prior to the appointment of a forensic medical examination commission, it is necessary to perform a number of actions that will serve for a complete and objective examination.

Thus, according to Article 180 of the Code of Criminal Procedure of the Republic of Uzbekistan, an official of the body carrying out the pre-investigation check, the interrogator, the investigator shall issue a decision, and the court shall issue a ruling on the appointment of an examination, which shall indicate: the motives that served as the basis for the appointment of the examination; material evidence or other objects sent for examination, indicating where, when and under what circumstances they were found and seized, and when conducting an examination on the materials of the case - information on which the expert's conclusions should be based; questions put to the expert; the name of the expert institution or the name of the person entrusted with the examination⁸.

When appointing a commission forensic medical examination, experts are provided with the materials of the pre-investigation check, they must contain explanatory notes of the victims or relatives of the deceased, witnesses, medical workers who took part in the treatment of the victim or deceased, examination of the scene of the incident, the conclusion or act of the specialist who was involved in the course of the pre-investigation check, as well as a number of medical documents such as the patient's inpatient record where he received treatment (medical history), conclusions of pathological-anatomical examination, archives (paraffin, wet, glass) (if the patient died and underwent pathological-anatomical examination) and, of course, an outpatient card (which is stored in the clinic).

⁷Code of Criminal Procedure of the Republic of Uzbekistan. National Database of Legislation of the Republic of Uzbekistan, 22.09.1994, <http://lex.uz/uz/docs/111463> See Art.172

⁸Code of Criminal Procedure of the Republic of Uzbekistan. National Database of Legislation of the Republic of Uzbekistan, 22.09.1994, <http://lex.uz/uz/docs/111463>

The need for the above documents is the basis for a full and objective conduct of a forensic medical examination.

In practice, in the absence of the above documents, experts will not conduct a full examination and establish the cause and circumstances of causing harm or resulting in the death of a person through the fault of medical workers is impossible, and may subsequently be reflected in the expert opinion.

It is necessary to note the category of pre-investigation checks, which resulted in the death of a person through the fault of medical workers through negligence.

A special role in the course of the pre-investigation check is the post-mortem examination of the corpse.

According to the order of the Minister of Health of the Republic of Uzbekistan "On approval of the regulation on the procedure for pathoanatomical examinations" (registered by the Ministry of Justice of the Republic of Uzbekistan dated 22.02.2019) In order to correctly diagnose and effectively treat patients who are on outpatient and inpatient treatment in a medical institution, anatomical studies are carried out by biopsy in the Republican Pathoanatomical Center, pathoanatomical branches and regional bureaus.

Pathoanatomical studies using the autopsy method for a person who died as a result of a disease in a medical institution are carried out by pathoanatomical services in accordance with the established procedure⁹.

After receiving the results of the laboratory study, they are analyzed by the pathologist, and the final diagnosis on the basis of the postmortem examination is drawn up in the protocol of the postmortem examination¹⁰.

This document will serve as a basis for experts to clarify the cause of death and the causal relationship of the methods of treating a person in medical institutions.

Unfortunately, very often there are cases of incomplete post-mortem examinations of the corpse. This is mainly due to the religion of Islam.

In this case, the relatives of the deceased do not agree with the conduct of post-mortem examinations and give a receipt for not conducting these studies, the corpse is taken away arbitrarily and have no claims to medical workers. Whereas the cause of death of a person who died in a medical institution remains preliminary and not specifically established.

And for a complete and objective commission examination, a protocol of post-mortem examination and a number of archives that were seized during the study are necessary.

The conclusions of the commission of forensic medical examination will be as follows, "It is impossible to establish the cause of death or improper performance of their medical duties that caused the death of a person, due to the lack of post-mortem examinations."

It should be noted that all of the above actions are carried out during the specified period of the pre-investigation check. Thus, in exceptional cases, the period of pre-investigation inspection may be extended by the procurator to one month on the basis of a reasoned decision of the person conducting the initial inquiry, investigator or official of the body carrying out the pre-

⁹ Order of the Minister of Health of the Republic of Uzbekistan "On approval of the regulations on the procedure for post-mortem examinations" (registered by the Ministry of Justice of the Republic of Uzbekistan dated 22.02.2019)

¹⁰ Order of the Minister of Health of the Republic of Uzbekistan "On approval of the regulation on the procedure for post-mortem examinations" (registered by the Ministry of Justice of the Republic of Uzbekistan dated 22.02.2019)

investigation check, in the presence of an appointed examination, official investigation, audit or other inspection that requires a long time for their production, it is necessary to request explanations from persons who are in remote areas or evade appearing on calls, etc.¹¹

But it must be admitted that this period is not enough when conducting a pre-investigation check on an application or message regarding the death of a patient or harm caused by the fault of medical workers.

For example, in the proceedings, an employee of the prosecutor's office (investigator or assistant prosecutor) has enough materials and appeals, as well as other instructions that he must perform.

As mentioned above, upon receipt of an appeal regarding the death of a patient or harm caused by the fault of medical workers (which was registered as a report of a crime), he needs to take explanatory notes from the sections of the material, i.e. the victim, witnesses, relatives of the deceased, medical workers who were directly involved in the treatment and, of course, from the management of the medical institution, having studied the circumstance of the case, the employee needs or appoints an official investigations against medical professionals or involve certain specialists for the legal assessment of medical professionals together with on-site visits. Conclusions or acts of internal investigation or specialists are provided to the employee 10-15 days after receipt of a request or letter, of course, specialists or authorized employees will study the actions of medical workers together with the patient's documentation that is stored in a medical institution, after receiving a conclusion or act, as well as explanations from all participants and witnesses, the employee must withdraw certain documents for further submission to the Expertise. This will take 2-3 days, then, an employee of the prosecutor's office appoints a commission forensic medical examination and all documents collected in the pre-investigation check are provided to the examination. The timing of the forensic medical examination is determined within 30 days, taking into account the complexity and features of the forensic examination. As it was said, materials or cases related to medical workers are appointed by a commission forensic medical examination, in practice this examination ends in 25-28 days after the appointment (here it is necessary) to take into account the volume of experts.

Thus, an employee or investigator of the prosecutor's office, who has accepted the above-mentioned pre-investigation material into his production, will definitely not have enough 30 days to make a legal decision. As a result, he has to make decisions to refuse to initiate a criminal case, without having an expert opinion and, of course, the material itself on the inspection. After receiving the expert opinion, it is necessary to make a legal decision on the material.

Here, of course, the prosecutor's supervision of decisions plays a special role. According to Article 337 of the Code of Criminal Procedure of the Republic of Uzbekistan, while supervising the legality of the initiation of criminal proceedings, the prosecutor has the right to cancel the

¹¹Code of Criminal Procedure of the Republic of Uzbekistan. National Database of Legislation of the Republic of Uzbekistan, 22.09.1994, <http://lex.uz/uz/docs/111463>

decision to initiate criminal proceedings and refuse to initiate proceedings, to cancel the decision to refuse to initiate criminal proceedings and at the same time to initiate proceedings¹²

Thus, the prosecutors of the districts of the city of Tashkent canceled 17 decisions in 2020, 22 resolutions in 2021 and 11 decisions in 2022 to refuse to initiate a criminal case for pre-investigation checks regarding the death of a patient or harm caused by the fault of medical workers.

Of course, without certain methods of conducting a pre-investigation check on the fact of death or harm caused by medical workers, the legal assessment and conclusions of the prosecutor, as well as superiors, will be different.

Thus, it is necessary to revise the methodology for considering appeals and reports regarding the death of a patient or harm caused by medical workers, measures and other measures to conduct a pre-investigation check, and it is also necessary to consider the timing during this inspection.

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