

The comparison of the foreign experience of leading states in using the institution of petitions and complaints

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Abstract: The article examines the institution of petitions and complaints in criminal proceedings, with particular attention paid to the experience of the Russian Federation, the Republic of Kazakhstan, and Uzbekistan. A comparative analysis of regulatory and legal regulation was conducted, the distinctive features and prospects for improving legislation were identified. Particular attention is paid to the status of the institute of petitions and complaints, procedures for submitting, considering and resolving these procedural actions at the pre-trial and trial stages of criminal proceedings. Recommendations have been proposed to borrow successful practices from the legislation of Kazakhstan and Russia to strengthen the legal protection of participants in the criminal process in Uzbekistan.

Keywords: Motion, complaint, criminal proceedings, participants' rights, pre-trial proceedings, judicial proceedings, legislation, the Code of Civil Procedure of the Russian Federation, the Code of Civil Procedure of the Republic of Kazakhstan, the Code of Civil Procedure of the Republic of Uzbekistan.

Introduction: In this article, we will examine the experience of several foreign countries, including post-Soviet states, and analyze trends in the use of petitions and complaints within the criminal procedures of advanced nations.

In the Criminal Procedure Codes of the Russian Federation and the Republic of Kazakhstan, petitions and complaints are given special attention, being allocated separate chapters. This emphasizes their status as a distinct institution aimed at protecting the rights of participants in criminal proceedings.

Examining Chapter 15 of the Criminal Procedure Code of the Russian Federation (Petitions), we noted that the legislator specifically identifies the persons entitled to file petitions, the stages of filing, the timeframes for consideration, and the procedure for resolving them.

According to Article 119 of the Criminal Procedure Code of the Russian Federation, the suspect, the accused, their defense counsel, the victim, their legal representative and representative, the private prosecutor, the expert, the civil claimant, the civil defendant, their representatives, the representative of the administration of an organization, and any other

person whose rights and lawful interests are affected during pre-trial or trial proceedings have the right to file a petition for the conduct of procedural actions or the adoption of procedural decisions. This is done to establish circumstances significant to the criminal case and ensure the rights and lawful interests of the person filing the petition or those of the individuals or organizations they represent.

The petition is submitted to the inquiry officer, investigator, or court.

During the trial, the public prosecutor¹ is also entitled to file petitions.

Parts 1 and 2 of this article address the submission of petitions as a means of protecting the rights and lawful interests of participants in criminal proceedings at the pre-trial or trial stages. The third part, however, regulates the right of the public prosecutor to file petitions during the trial stage, which undoubtedly carries an accusatory nature.

In other words, the prosecutor, acting as the public prosecutor, will predominantly file petitions of an accusatory nature, as it is in their interest to prove the defendant's guilt (if it exists) and uphold the laws of the

country.

Based on the analysis of the above-mentioned article of the Criminal Procedure Code of the Russian Federation, the following conclusion can be drawn: witnesses have the right to file petitions, as stated in Part 1 of this article, which specifies "... and other persons whose rights and lawful interests are affected during pre-trial or trial proceedings." Consequently, "other persons" can be understood to include witnesses because their interests may be directly affected. For example, this often pertains to ensuring the safety of witnesses if there is a real threat to their life, property, or relatives.

Nevertheless, according to Part 1 of Article 66 of the Criminal Procedure Code of the Republic of Uzbekistan, which outlines a number of the rights of witnesses, it does not establish the right of a witness to file petitions as a participant in criminal proceedings who can protect their rights and defend their interests, particularly in aspects concerning witnesses.

Additionally, Article 120 of the Criminal Procedure Code of the Russian Federation provides that a petition may be filed at any stage of criminal proceedings. A written petition is included in the criminal case, while an oral petition is recorded in the protocol of the investigative action or court session.

The rejection of a petition does not deprive the applicant of the right to re-submit the petition.

This provision is similar to what is established in the criminal procedural legislation of the Republic of Uzbekistan.

However, the legislator of the Russian Federation provides a specific timeframe for resolving petitions, which would be a beneficial innovation in the Criminal Procedure Code of the Republic of Uzbekistan. The lack of defined timeframes for considering and deciding on filed petitions leads to the infringement of the rights of participants in criminal proceedings.

According to Article 121 of the Criminal Procedure Code of the Russian Federation, a petition must be considered and resolved immediately after it is filed. In cases where an immediate decision on a petition filed during the preliminary investigation is not possible, it must be resolved no later than three days from the date of filing¹.

The concluding provision regulating the resolution of petitions states as follows: "The inquiry officer, investigator, or judge issues a ruling, and the court issues a determination on the satisfaction of the petition, whether fully or partially denied. This decision is communicated to the individual who filed the petition. The decision on the petition may be appealed in accordance with the procedure established by

Chapter 16 of this Code²."

The above article establishes the form of decision-making by officials at the corresponding stages of criminal proceedings (pre-trial and trial stages).

According to Article 123 of the Criminal Procedure Code of the Russian Federation, the actions (or inaction) and decisions of the inquiry officer, the head of the inquiry unit, the head of the inquiry body, the inquiry body itself, the investigator, the head of the investigative body, the prosecutor, and the court may be appealed by participants in criminal proceedings, as well as other persons, to the extent that the procedural actions performed and decisions made affect their interests.

If reasonable timeframes for criminal proceedings are violated during the pre-trial stage, participants in the proceedings, as well as other persons whose interests are affected, may file a complaint with the prosecutor or the head of the investigative body. Such complaints must be considered in accordance with the procedure and within the timeframes established by Article 124 of this Code¹.

The analysis of this article identifies the range of persons whose decisions and actions (or inactions) may be appealed. Additionally, the second part emphasizes departmental appeals, as discussed earlier.

The next article establishes a specific procedure and timeframe for considering and resolving complaints. According to Article 124 of the Criminal Procedure Code of the Russian Federation, the prosecutor or the head of the investigative body reviews the complaint within three days of its receipt. In exceptional cases, when additional materials need to be requested or other measures need to be taken to verify the complaint, the review period may be extended to ten days, with the applicant being notified of this extension.

Based on the results of the complaint review, the prosecutor or the head of the investigative body issues a resolution either fully or partially satisfying the complaint or refusing its satisfaction.

If a complaint filed in accordance with Part 2 of Article 123 of this Code is upheld, the resolution must specify the procedural actions to be taken to expedite the consideration of the case and the timeframes for their implementation.

The applicant must be promptly notified of the decision made regarding the complaint and the further procedure for appealing it.

In cases provided for by this Code, the inquiry officer or investigator has the right to appeal the actions (or inaction) and decisions of the prosecutor or the head of

the investigative body to the respective higher-ranking prosecutor or the head of the higher-ranking investigative body .

One of the key aspects of this article is the fact that the legislator views the institute of appeal both as a tool for protecting the rights and lawful interests of participants in criminal proceedings and as a mechanism for ensuring the independence of inquiry officers and investigators. The final part emphasizes that inquiry officers and investigators have the right to appeal decisions made by the prosecutor and the head of the investigative body to higher authorities in accordance with the departmental hierarchy.

These guarantees protect the law in cases where the prosecutor or head of the investigative department gives unlawful instructions or directives that contradict the swift and comprehensive investigation of the case. Thus, investigators and inquiry officers maintain a certain degree of independence.

In addition to the departmental level of appeals, the criminal procedural legislation of the Russian Federation also provides for a judicial procedure and jurisdiction for considering complaints about the decisions and actions (or inactions) of officials conducting pre-trial investigations. Article 125 of the Criminal Procedure Code of the Russian Federation regulates the procedure for filing complaints and the process of their consideration in court, which is undoubtedly a notable difference from the Criminal Procedure Code of the Republic of Uzbekistan.

It should be noted that a similar procedure for considering complaints by an investigative judge is also provided in the Criminal Procedure Code of the Republic of Kazakhstan.

A complaint to the court may also be filed through the inquiry officer, the head of the inquiry body, the investigator, the head of the investigative body, or the prosecutor, as stated in Article 125 of the Criminal Procedure Code of the Russian Federation. This rule means that the person filing the complaint is not obligated to spend time submitting the complaint according to the court's jurisdiction.

Article 125.1 regulates the specifics of considering certain categories of complaints, including complaints about the decision of the inquiry officer, the head of the inquiry body, the investigator, the head of the investigative body, or the prosecutor to discontinue a criminal case because a new law was enacted before the conviction became final, which eliminated the criminality and punishability of the act, or when the person was under the age of criminal responsibility, or even if they reached the age but did not fully understand the public danger of their actions due to

developmental delay not related to mental illness.

After examining the content of this article, we assume that there was no separate need to establish these rules, as the procedure for considering such cases falls under the general procedure provided in Article 125 of the Criminal Procedure Code of the Russian Federation.

The procedure for submitting complaints by suspects and accused persons held in custody is regulated by Article 126 of the Criminal Procedure Code of the Russian Federation, which states that complaints by suspects and accused persons must be immediately forwarded to the prosecutor or the court to which they are addressed.

In light of current challenges and trends in the development of criminal procedure, the legislation of the Republic of Kazakhstan has made significant progress in this area, surpassing even many advanced countries by applying various scientific approaches in practice. Since the Republic of Kazakhstan is one of the closest neighbors of the Republic of Uzbekistan, and their legal systems are largely similar, we can confidently analyze and compare Kazakhstan's experience in criminal procedure and the prospects for implementing some new institutions.

The Republic of Kazakhstan has also succeeded, to a certain extent, in ensuring the existence and functioning of the process for filing motions and complaints as a separate and independent institution, which guarantees the protection of the rights and legitimate interests of participants in the criminal process. A clear example of this is the allocation of the institution of motions and complaints during the pre-trial phase of criminal proceedings into a separate chapter of the Criminal Procedure Code of the Republic of Kazakhstan, which specifies the timelines, procedures, persons entitled to file motions and complaints, as well as the individuals who resolve these motions and complaints, and more.

According to Article 99 of the Criminal Procedure Code of the Republic of Kazakhstan, participants in the criminal process have the right to submit motions to the person conducting the pre-trial investigation, the prosecutor, or the judge (in court) regarding procedural actions or decisions aimed at establishing circumstances relevant to the criminal process, ensuring the rights and legitimate interests of the person submitting the motion or the person they represent.

Motions may be submitted at any stage of the process. The person submitting the motion must specify what circumstances they seek to establish through the action or decision. Written motions are attached to the case materials, while oral motions are recorded in the

protocol of the investigative action or court hearing.

The rejection of a motion does not prevent its resubmission at later stages of the criminal procedure or to another body handling the criminal process.

Motions must be reviewed and resolved immediately after they are submitted. If an immediate decision on the motion is not possible, it must be resolved no later than three days from the date of submission.

The motion must be granted if it contributes to a thorough, complete, and objective investigation of the case's circumstances, ensuring the rights and legitimate interests of the participants or other persons in the process. In other cases, the motion may be rejected. The body conducting the criminal process cannot refuse to grant a motion to summon individuals as experts or witnesses whose attendance is ensured by the parties. The body conducting the criminal process is obliged to assist the party in securing the appearance of such persons for questioning, including through the use of legal measures of procedural coercion.

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