International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 02 ISSUE 08 Pages: 19-24
SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705)
OCLC – 1121105677 METADATA IF – 5.489
Publisher: Oscar Publishing Services

Journal Website: https://theusajournals.com/index.php/ijlc

Research Article

PRELIMINARY HEARING OF CRIMINAL CASES: FEATURES, ISSUES AND NEED FOR IMPROVEMENT

Submission Date: August 15, 2022, Accepted Date: August 25, 2022,
Published Date: August 30, 2022
Crossref doi: https://doi.org/10.37547/ijlc/Volume02Issue08-05

D.S. Dovudova
Associate Professor, PhD, The Academy of the General Prosecutor's Office, Uzbekistan

ABSTRACT

This article highlights the features of the stage of a preliminary hearing of a criminal case, the powers of the prosecutor, as well as the existing problems concerning this stage making a comparative legal analysis, and proposals are developed for the improvement in this regard.

KEYWORDS

Court, judge, prosecutor, powers, recall of case, court of first instance, court trial, preliminary hearing.

INTRODUCTION

The preliminary hearing stage of a criminal case was introduced in the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC) by the Law of the Republic of Uzbekistan "On Amendments and Additions to the Criminal and Criminal Procedure Codes of the Republic of Uzbekistan" dated February 18, 2021 No. 675. An arraignment is an example of English court procedure [1]. Historically, this element of the judicial state can also be found in the CPC of the USSR (1923-1959). This stage is a court hearing, in which in some periods the

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 02 ISSUE 08 Pages: 19-24
SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705)
OCLC – 1121105677 METADATA IF – 5.489
Publisher: Oscar Publishing Services

participation of the prosecutor or investigator was optional, while in some periods this was mandatory.

Thus, it can be said that the preliminary hearing is not a new procedure for criminal cases; rather, the previous (old) CPCs laid the groundwork for it.

The court has the authority to send the case to another court, terminate it, stop it, and send it to the prosecutor, among other powers of the court of first instance at the hearing stage, according to the criminal procedure codes of the Russian Federation [2], Kyrgyzstan [3], the Republic of Belarus [4] and a number of other nations (the United Kingdom, the United States, France, Spain, Italy, Germany). This is done with the participation of the parties to the process.

THE MAIN FINDINGS AND RESULTS

The procedural code states that proceedings at the preliminary hearing are only for courts of first instance and are regarded as a stage of trial preparation.

In our opinion, the purpose of this stage are to examine the criminal case, get ready for the trial, evaluate the caliber of the evidence gathered during the preliminary investigation and inquiry, and determine the future course of the criminal case.

There are specific procedural requirements for the preliminary hearing, including the following:

Firstly, the presence and brief appointment of the matter for consideration, its beginning, the length of the consideration, and the filing of a complaint or protest are the first procedural terms;

Secondly, the presence of procedural documents, such as the petition, court order, court proceedings minutes, complaint, and protest;

Thirdly, it has procedural grounds, i.e. grounds such as stopping, terminating, sending the case to the prosecutor, issuing inadmissible evidence, and joining or separating the case;

Fourthly, procedural order, which is the conduct of procedures in accordance with particular special regulations in addition to the overall framework of proceedings;

Fifthly, the attendance of those who have the right to participate in the proceedings (the victim, the civil plaintiff, the civil defendant, and their representatives), as well as those whose participation is required (prosecutor, accused and defender).

As seen above, we believe that each phase of the trial has distinct characteristics and objectives, and the preliminary hearing phase is no exception.

As was already mentioned, the prosecutor's involvement is now required, thus it is fair to categorize his authority in this manner. In particular, the prosecutor has the power to:

- File a motion to hold a preliminary hearing;
- Participate in the hearing;
- Voice an opinion or oppose to the matter being discussed at the preliminary hearing;
- File a protest against the decision reached regarding the case's outcome.

However, we can also see from experience that the preliminary hearing stage isn't employed very often these days. Statistics alone show that practically all of the work was completed in 2021 as evidence for this. It

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 02 ISSUE 08 Pages: 19-24
SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705)
OCLC – 1121105677 METADATA IF – 5.489
Publisher: Oscar Publishing Services

is therefore not an overstatement to suggest that it has gaps and issues.

First of all, for each new criminal case, the court must determine whether there are sufficient grounds to convene a preliminary hearing in accordance with Article 395 of the Criminal Procedure Code. The grounds for holding a preliminary hearing are provided for in Article 405-3 of the Criminal Procedure Code and are considered strict.

The court makes a decision regarding holding a preliminary hearing on all the grounds specified in Article 405-3 of the Criminal Procedure Code based on the petition of the parties or on its own initiative (apart from the issuance of inadmissible evidence). According to Article 395 of the Criminal Procedure Code, the court has a timeframe for making a judgment regarding whether to hold a preliminary hearing on its own initiative if there are sufficient reasons to do so.

However, the CPC lacks a clear policy about when and how long the parties must wait before submitting petitions to the court after becoming familiar with the criminal case files.

In particular, under part 3 of Article 229 of the Criminal Procedure Code of the Russian Federation, the parties may request a preliminary hearing within three days of the day on which they receive a copy of the indictment, or after familiarizing themselves with the criminal case files and sending them to the court [5].

Our opinion is that the date for the parties to make a request for a preliminary hearing should be expressly stated in Article 405-3 of the Criminal Procedure Code. It also places obligations on the parties and precludes varying interpretations from being used in the future by law enforcement.

Secondly, pursuant to paragraph 5 of the second part of Article 405-3 of the Criminal Code, evidence that is inadmissible in the case may be excluded at the request of one of the parties. This rule makes clear that only the parties have the authority to ask for the exclusion of illegal evidence from a criminal trial; the judge is not permitted to do so.

However, it is not an exaggeration to claim that this standard of the criminal procedural law is incorrect given that the court plays a major role in the substantive resolution of the criminal case.

For instance, it appears from the criminal case's documentation that the search and investigation actions were conducted in violation of the requirements of the Criminal Procedure Code. The parties, however, did not receive a motion to exclude this inadmissible material from the record\case. According to the CPC, the court has no right to take such an initiative. In this case, although there is a basis for holding a preliminary hearing, the petition of the subject requesting to hold it is not available. We believe that this topic merits discussion.

According to Article 95 of the Criminal Procedure Code, the inquiry officer, investigator, prosecutor, and court must evaluate the evidence in accordance with their internal convictions, while also adhering to the law and having a legal consciousness, and after carefully, completely, comprehensively, and impartially examining all the relevant facts of the case.Each piece of evidence must be evaluated for relevance, admissibility, and credibility.

It is appropriate, in our opinion, to grant the court the authority to hold a preliminary hearing on its own initiative in order to omit unreliable evidence. Because the judge evaluates whether the evidence was

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 02 ISSUE 08 Pages: 19-24
SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705)
OCLC – 1121105677 METADATA IF – 5.489
Publisher: Oscar Publishing Services

gathered in accordance with the requirements of the CPC as a matter of proof during the preliminary hearing.

Furthermore, a copy of the motion to exclude inadmissible evidence based on criminal procedural legislation is sent to the prosecutor who approved the indictment (by inquiry officer) or the indictment (by investigator), as well as to the victim on the day the motion is presented to the court (Part 3 of Article 405-11 of the Criminal Procedure Code).

The legislation is vague about how long a preliminary hearing should last once the opposite party receives a copy of the petition, though. However, the party that received a copy of the petition must take some time to familiarize themselves with the case materials and make ready for the petition's justifications. At the same time, due to the fact that the procedural period of the preliminary hearing is short, a specific period should be noted in this regard.

Consequently, it is required to fill the eighth paragraph of Article 405-11 the Criminal Procedure Code in the following regulation to allow a preliminary hearing to be held three days after the day when a copy of the application to exclude inadmissible evidence is served to the other parties.

Thirdly, the court's authority to dismiss the criminal case in the presence of the circumstances outlined in the first and fifth parts of Articles 83 and 84 of the Criminal Procedure Code is one of the reasons for holding a preliminary hearing in a criminal case.

The criteria for rehabilitation are outlined in Article 83 of the Criminal Procedure Code. If no criminal incident has occurred in the case in which a case has been opened, investigative measures have been taken, or a trial has been held, if his act does not contain a criminal element, if he is not involved in the crime committed, and if he should be given the opportunity to be rehabilitated, the suspect, the accused, and the defendant shall be deemed innocent.

A.S. Barabash, L.M. Volodina stated that the termination of the criminal case is a procedural act that terminates all criminal-procedural relations [6].

The preliminary hearing is a step before the criminal case is discussed in court, as was already established. However, in order to conclude the criminal case in accordance with Article 83 of the Criminal Procedure Code, it is first essential to debate the charge's content and assess its legitimacy. At the initial stage of the hearing, it is not allowed to discuss the content of the criminal case.

In particular, in accordance with Article 239 of the Criminal Procedure Code of the Russian Federation, in cases where the prosecutor waives the charge in accordance with the procedure established in paragraphs 3-6 of the first part of Article 24 and paragraphs 3-6 of the first part of Article 27 of this Code, as well as in the seventh part of Article 246 of this Code, the court decides to dismiss the case [7].

According to the criminal procedural law of the Russian Federation, the court is not permitted to dismiss the criminal case on the basis of rehabilitation during the preliminary hearing stage; such a dismissal is only permitted if the prosecutor withdraws the charges.

In our opinion, it is required to order the termination of the criminal case on the basis of rehabilitation because the preliminary hearing stage is the phase of trial preparation.

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 02 ISSUE 08 Pages: 19-24
SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705)
OCLC – 1121105677 METADATA IF – 5.489
Publisher: Oscar Publishing Services

Fourth, the judge makes the following decisions in two distinct ways during the preliminary hearing phase of a criminal case:

- On holding a preliminary hearing
- According to the result of the preliminary hearing.

According to Article 395 of the Criminal Procedure Code, the court by making a decision to send the criminal case to the court for consideration of the issue of the indictment (by inquiry officer) or the indictment (by investigator) or the application of mandatory medical measures, issues a ruling on transfer of the case according to the relevance of the trial, on the appointment of the case for hearing in court, on the holding of the preliminary hearing.

According to Article 405-14 of the Criminal Procedure Code, the judge issues one of the following rulings based on the results of the preliminary hearing:

1) On suspending proceedings in a criminal case;
2) On termination of criminal proceedings;
3) On sending the criminal case to the prosecutor who approved the the indictment (by inquiry officer) or the indictment (by investigator) or the decision to apply mandatory medical measures;
4) On the consolidation or separation of criminal cases in the cases provided for in this Code;
5) On finding evidence inadmissible and on granting or refusing to grant a motion to exclude.

According to the rule set forth in this procedural regulation, the judge may only render a judgment based on the outcome of the preliminary hearing on one of the five grounds specified in Article 405-14 of the Criminal Procedure Code. However, if the criminal case is combined or separated and the evidence is judged to be inadmissible and released, there is no process on the basis of which the court will continue with the trial after the preliminary hearing stage. Considering that a procedural ruling determines whether a court will begin or end a case..

In particular, Article 236 of the Criminal Procedure Code of the Russian federation defines the system in this regard in a manner that is both explicit and understandable. It states that the judge has the authority to decide whether to schedule the matter for trial based on the outcome of the preliminary hearing. The facts and other matters that should be reflected in the decision have been thoroughly expressed. At the same time, the preliminary hearing's outcome should be formalized in the form of a decision.

In our opinion, the problem of choosing whether to schedule the case for court hearing as a consequence of the preliminary hearing must be addressed in the procedural legislation. This will help the preliminary hearing process function better and solve any applicable issues.

CONCLUSION

In conclusion, it should be highlighted that many of the gaps in the article make it challenging to apply the preliminary hearing stage in actual practice today. The article has only touched on a few of the issues that arise at this level of a criminal case. When introducing any procedural regulation, the implementation and management mechanisms must be flawless. This makes it simpler to uphold the law and stay clear of issues and loopholes.

REFERENCES

1. Criminal procedure: textbook / A.V. Smirnov, K.B. Kalinovsky; under general ed. A.V. Smirnova. -7th ed., revised. -M.: Norma: INFRA-M, 2019. - p 544.

International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 02 ISSUE 08 Pages: 19-24
SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705)
OCLC – 1121105677 METADATA IF – 5.489
Publisher: Oscar Publishing Services

2. "Criminal Procedure Code of the Russian Federation" dated December 18, 2001 N 174-FZ (as amended on August 2, 2019) (as amended and supplemented, effective from September 1, 2019) http://www.consultant.ru/document/cons_doc_LAW_34481/
3. "Criminal Procedure Code of the Kyrgyz Republic" dated February 2, 2017 No. 20 http://base.spinform.ru/
4. "Criminal Procedure Code of the Republic of Belarus" 07/16/1999 No. 295-Z http://etalonline.by/document/
5. http://www.consultant.ru/document/cons_doc_LAW_34481/30f31bcfdee07b4f57973752289cd805165a76b6/
6. A.S. Barabash, L.M. Volodina. Termination of criminal cases on non-rehabilitating grounds at the stage of preliminary investigation. Tomsk, 1986. p.47.
7. http://www.consultant.ru/document/cons_doc_LAW_34481/36f2e6da2a91b60b1dc4cc13abd5d3c2c389e9ed/