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Stages of criminal pre-trial proceedings

Abstract: It is studied the stages of pre-trial production, and the tasks and participants of these stages.

The problems of preliminary checking of materials, a notion of overt crime, and procedures of consideration of information about preparing crimes are analyzed.

It is given suggestions on change and supplement of criminal procedure legislation.

Keywords: stage; pre-trial criminal production; preliminary checking; information; suspected; overt crime.

There is not a unified point of view in legal books concerning to the stages of criminal proceedings in general and the stages of pre-trial proceedings in particular [1, p. 67-68; 7, p. 19; 10, p. 90]. The most scientists are considering the stage as a reflection of criminal case progress that, in our opinion, is considered to be wrong as it is lost the time (stage) of its initiation.

The system of actions and decisions, which constitute the stage of proceedings, is characterized with specific tasks, participants, legal relationships between them and registered documents, having time period of the beginning and ending.

Above stated is in the full extent related to the stages of pre-trial proceedings. Availability and consequence of these stages in proceedings of Azerbaijan Republic is defined by us the following way.

The first stage is begun from receiving by a body, which is carried out criminal process (see art. 7.0.5 of Criminal Procedure Code, further the CPC), information about committed or prepared crime. In notion of article 7.0.3 of the CPC there is not

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yet criminal process as such. Consequently, one should talk just about the bodies of inquire, investigation, prosecutor's office and courts, which are received this information. This stage is completed by registration of information received, and paying into account bureaucratic foot-dragging, it can take a few hours, but not more.

In any case, it should be established an order in office work of the mentioned bodies, which would provide an urgent registration all information in respect of committed or preparing crimes. First of all, it concerns each employee of these bodies, and especially, police control rooms (call centers) and offices, which are received this information.

This is in full extent concerned to the situations stipulated in the article 208 of the CPC (disclosure by an inquirer, investigator or prosecutor the circumstances indicated at crime commission or traces and consequences of crime at once after its committing; receiving information by an inquirer about crime from the employees of inquiry office, which is carried out operation search activity or during fulfillment of his powers in process of production of inquire on other crime in compliance with article 86 of the CPC; receiving information by an investigator about crime in process of fulfillment of his duties on other crime in compliance with article 85 of the CPC; receiving information about crime by prosecutor in course of other crime in compliance with article 84 of the CPC, and under fulfillment his duties in compliance with legislation of Azerbaijan Republic; receiving information about crime by a court in course of execution of its duties during examination of some case production) [12, p. 213-214].

The main task of this stage is a quick reaction on information about crime. Employees of proper inquiry, investigative body, prosecutor's office or court, which have received and registered this information, and also applicant (if any) are the participants of this stage. In reality, leadership of a body that received this information is also participated in this stage. As rule, this is happened before registration (documenting), but this is a topic of special talking. We should note that in our understanding the pre-trial proceedings, consisting from the stages, is

uninterrupted process, where a completion of the first stage is became the second one, ending of the second stage – the third one, etc. before trial beginning.

Each of these stages is independent and its existence comes from the valid criminal procedural legislation.

The stages are following in certain sequence, except the stage of case cancellation, a repeal of decision on cancellation and the forthcoming acceptance a case to production.

The second stage of pre-trial production begins from registration (documenting) of crime information and is ended when an executor takes information for checking. Depending on a nature of information and under necessity to send it on jurisdiction, this period of time can take munities, hours, and sometimes a few days if registered information is sent by mail or in remote region.

As in previous stage, a quick reaction on crime information and its documenting are the specific tasks of this stage, and employees of offices, police call rooms, a leadership and executor received information for checking are the participants of it.

The third stage is begun from receiving crime information and is finalized with checking completion of it.

Checking of this information, depending on a nature of it, may take munities, and according to the latest supplements and changes in the CPC, it may last up to 30 days.

The CPC of Azerbaijan SSR of 1960, like the CPC of other republic of the former USSR, did not contain a notion “checking” and provision of its production: part 2 of the article 108 was said that without production of investigative actions, stipulated in the CPC, when received information had required the additional materials and explanations, they could be reclaimed [11, p. 288].

In connection with this in theory of criminal process was expressed various opinion in respect of name, content and nature of this activity. This created inconsistency in a practice of its fulfillment [19, p. 62-63; 2, p. 50-51; 5, p. 31-34; 6, p. 76; 9, p. 71].

The main divergence of the scientists and practitioners were concerned duration and instrumental problems, which are such with acceptance of new CPC of Azerbaijan Republic of 2000, the evidence of which is supplements and changes of the article 207 of the CPC that is stipulated an order of consideration of information about committed and preparing crimes, including preliminary checking.

According to article 207.1.2 of the CPC (as of May 4, 2014), an inquiry officer, investigator or prosecutor, carrying out procedural leadership by preliminary investigation, after receiving information about committed or preparing crime (except information on obvious crimes) must produce within three days (if it is impossible, within not more than 10 days; if it is required receiving an expert record – not more than 30 days, as it stipulated in article 207.3 of the CPC) preliminary checking of the grounds that sufficient to initiate a criminal case.

According to new (30.06.2009) edition of article 207.3 of the CPC, under consideration of information about committed or preparing crimes if it is required inspection of activity of the legal entity with application of special knowledge in science, tactics, art and other professional branches it should be done the following:

- prosecutor, carrying out procedural leadership by preliminary investigation, makes a decision to enlist a specialist from the proper state bodies or auditing organizations;

- according to inspected materials one is made a resolution to institute or refuse in institution of criminal case [13, p. 241].

According to article 207.4 of the CPC (edition of 18.04.2014), under consideration of information about committed or prepared crime an inquiry officer, investigator or prosecutor, carrying out procedural leadership by preliminary investigation, may require from complainants additional documents, explanations, to inspect a scene of action and appoint an expertise. It is prohibited production of other investigative action, except inspection of a scene of action and expertise appointment, and also application of the measures of procedural coercion (except detention), before institution of criminal case [13, p. 241].

Earlier, article 207.1.2 of the CPC was said about terms of checking, which might be lasted up to 20 days, in case an expert record waiting. Being an investigative action, appointment and production of expertise is caused a collision with article 207.4 of the CPC, which, before institution a case, bans production of investigative actions, except inspection of a scene of action.

Similar situation was with valid up to 18.04.2014 prohibition on applying the measures of procedural coercion, contradicting the article 148.4 of the CPC, providing detention before initiation of criminal case [12, p. 211-213].

Despite delaying, it is good that our suggestions concerning to this part have been taken into consideration.

In our opinion, under preliminary checking of information about committed or prepared crimes the following issues are problematic: attribution of crime to overt or unobvious one; terms of checking; decision on necessity to check; subjects of checking and participation of an inquiry body in it; methods of check; evidential significance of checking materials. Let's try to consider them in indicated sequence.

The CPC of Azerbaijan Republic does not contain the definitions of an overt and unobvious crime, leaving resolution of this issue in discretion of an executor. A statement about disclosure of unknown corpse is not always the statement about crime commission. It will become such only when it will be disclosed the signs of murdering, which can be unobvious at moment of incident disclosure. Meanwhile, article 209.2.1 of the CPC refers disclosure of unknown corpse to the events of an urgent initiation of criminal case. A statement about theft of accountable funds might be lodged after embezzlement of them; despite it will be look like information about overt crime. Similar character will have statement on breaking of entrance door, confirmed by inspection, until it is not be clear that a loss of the key by other family member will have been a reason of it. There are a lot of these examples. The way out is to supplement article 209 of the CPC by provisions about overt crimes, to which we offer to refer the events (incidents), containing signs of objective side of guiltily committed socially danger action, prohibited by the Criminal Code.

We are just talking about obviousness of the signs of objective side of crime, but not specific persons who committed of it. This is difference between that overt crime but unknown who committed and overt crimes not having a great social danger in notion of Resolution of the Plenum of the Constitutional Court of Azerbaijan Republic.

The terms of preliminary checking are directly associated with definition of overt or unobvious crime.

Assertion about possibility expertise production and auditing (accounting audit) during 30 days and prolongation of the terms of preliminary checking is groundless. So, it is necessary 21 days of treatment in order to attribute body injures (that received in road accident) to less gross crimes. Some other kinds of expertise may produce longer. In addition, the CPC does not say about terms of preliminary checking under auditing (accounting audit) examination of legal entity activity. This can be lasted for months depending on period and volume of inspection.

It was a case in the MIA of Azerbaijan, when checking of the statement on illegal traffic of psychotropic substances had lasted more than 5 months. Reason for this was to wait for the answers on requests sent in some bodies of Turkey and Switzerland [3].

In connection with above stated, we suggest to supplement article 207 of the CPC with provision on prolongation by a higher ranking prosecutor the terms of preliminary investigation in the stage of pre-trial production in order to finalize the investigation. Otherwise, decision about institution of criminal case or refusal in this will not be legally sufficient.

According to article 207 of the CPC, a decision about additional checking may be made by an inquiry officer, investigator or prosecutor who carrying out leadership by preliminary investigation. Moreover, inspection of an activity of legal entity is carried out only by decision of prosecutor.

Stated above presupposes that in order to inspect a legal entity an inquiry officer or investigator should apply with petition to prosecutor.

But, as rule, information about committed or prepared crime are received first by heads of inquiry body or police control rooms, which have no the right to preliminary inspection.

In connection with stated, it seems necessity to supplement article 207 of the CPC with provisions about subjects of preliminary checking adding in the list also inquiry body (together inquiry officer, investigator, prosecutor).

Content of article 207 of the CPC says that receiving of explanations, vindication of documents and references, inspection of scene, appointment of expertise and audit (accounting audit) are the methods of preliminary checking.

But, in certain cases it is necessary to have samples for comparative examination in order to produce an expertise, which can be received only through production of investigative actions – seizure of samples. In addition, sometimes it is necessary to have documents in original to make a decision on merits about initiation of criminal case, which, as rule, can be also received with seizure. With considering a ban to produce of investigative actions before institution of criminal case, solving of the situation is seen by us in the following.

According to article 10 of the Law of Azerbaijan Republic "On Operational Investigative Activity" (further, OIA), subjects of the OIA have right to fulfillment, as operational investigative activity, collection of samples for comparative examination, identification of person, taking the goods for inspection, examination of things and items, interception of communications, check of postal, telegraph and other sending, inspection of transport means etc. [8, p. 11].

All listed actions are in certain interpretation shown in the CPC as investigative ones.

Therefore, it is presented necessity to supplement the CPC with provision about the right of an inquiry officer, investigator and prosecutor to draw to preliminary checking an inquiry office with its operational investigative powers. This actual interaction during exposing of crimes might be arranged with proper letters-instructions about necessity to produce certain actions to check the circumstances, in which are interested of initiator.

To observe the rights and freedoms of suspected or accused persons, production of all listed actions should be included in procedure that provided by article 445 of the CPC "Operational search measure fulfilled by decision of court" [12, p. 439-440].

Particularities of third stage of pre-trial production are the facts that sometimes during its course might be applied a measure of procedural coercion – detention and is appeared procedural figure of suspected. In our point of view, the CPC of Azerbaijan stipulates wrongly the notion of it (about which we are talking below).

Thus, if a person is detained by eye-witnesses of incident or officers of an inquiry office under commission of crime or directly after it then together with information about crime to officer-executor is passed also the individual committed this crime. According to supplemented of the CPC with article 148.5 (this suggestion was prepared and presented by us to Milli Meclis - parliament), the officers of an inquiry office should draw up a protocol about detention. In this case, officer-executor receives information (materials) and protocol about detention of a suspected person (in notion of article 90.1.2 of the CPC). Rights and obligations should be clarified to detained person immediately after drawing up a protocol of detention; at the same time should be considered an issue about participation of defender.

The protocol of detention, in most cases, is drawn up by officer-executor, who received information (materials) about crime together concrete person and then clarification of his right and providing with defender are solved by him.

In case of suspected person is available, duration of the third stage of pre-trial production is defined with the law and lasted 24 hours before institution of criminal case, i.e. until the next stage.

There is not unified point of view in legal books in respect of brought decision to recognize an individual as suspected person. But, in our point of view, this decision should be mandatory together with protocol of detention, and the law in this part (art. 148.5 of the CPC) should be supplemented.

In addition, according to article 90.7.3 of the CPC, suspected person has the right to have a copy of protocol and also decision on his detention, which in essence is a decision to recognize an individual as suspected one. Detention is a volitional act,

with which an individual receives a status of suspected. Therefore, it should be legally substantiated and clarified to detained person.

As for "suspected" notion, as we pointed above, in our point of view, it is presented wrong and the law in this part should be changed. Thus, according to article 90 of the CPC of Azerbaijan Republic, suspected person is recognized: a) an individual in respect of who is had a decision on detention in order to bring him accusation; b) an individual who detained on suspicion in crime commission; c) an individual who is restrained except of arrest, bail and house arrest [12, p. 82].

But, according to article 91.1 of the CPC, an individual who is brought as accused person is considered to be accused one if even he has hidden from investigative body and court [12, p. 85]. According to article 223 of the CPC, a person is considered to be accused one at once a decision brought about it, and according to article 224 of the CPC, arraignment is possible only to accused person [12, p. 233, 234].

Thus, an individual is received a suspected status being had accused status. This is wrong and the law should be changed in this part.

According to article 40 of the CPC of Belarus Republic, a suspected person is an individual who detained on suspicion in crime commission or an individual in respect of which initiated criminal case or brought a decision about: a) application of coercion measures until acceptance a decision to bring him as accused; b) recognition as suspected [14, p. 68]. Part 5 of the article 40 of the CPC of Belarus Republic says that if it is brought a decision on recognition of a person as suspected then he is remained in status until acceptance of decision to bring him as accused person or cancellation of criminal prosecution. In case of application of coercion measures in respect of suspected then he may remain in this status not more than 72 hours (part 2 of article 40 of the CPC).

Article 72 of the CPC of Georgia says that a man may be recognized as suspected only on initiated criminal case, but a term of his staying in this status is not stipulated [15, p. 34].

According to the CPC of Kyrgyz Republic (art. 39), CPC of Russian Federation (art. 46) and CPC of Kazakhstan (art. 68) a person, in respect of which initiated criminal case, is recognized a suspected one [17, p. 18; 18, p. 25-26; 16, p. 51].

It seems that this ground to recognize a man as suspected one is correct despite non-resolving of discussion about that a case is initiated according to the fact, but not in respect of a person. In our point of view, under presence of information about commission of concrete crime by particular person a case should be instituted just in regarding to a particular person, which should be considered to be suspected one until bringing a decision about his holding as accused or cancellation of criminal case. Correspondingly, this person receives the status of suspected from this moment.

Sometimes, especially of the cases of economic crimes, a person is remained in status of witness if even he is interrogated on specific episodes of crimes or if his activity is subject of accounting (auditing) inspection. In our point of view, in these situations a person is deprived the rights of suspected, list of which is much more than witness has. This is a violation of principles of the right to defence and adversarial character.

So, Baku Court on Grave Crimes was recognized the situations, as violation the right to defence, when criminal case on embezzlements in Baku Plant of electronic computers, which was initiated according to the materials of the Audit Bureau of Ministry of Finance of Azerbaijan Republic. This case investigated more than six months and Isayev, a chief accountant of the plant, had been considered as witness despite the fact that he had interrogated on specific episodes of criminal deals that were indicated in certificate of audit. While, all his petitions were rejected by investigators due to a witness had the right to lodge only the requests. During two days Isayev was informed about investigation completion, bringing his to criminal liability and drawn up a protocol about familiarizing with materials of case and absence of his petitions. Earlier submitted petitions were left without consideration.

Court, by its special resolution, pointed out that according to article 121 of the CPC, investigator had to consider all his petitions as other person participating in process, to which was related also witness.

In addition, court indicated that a request, in compliance with article 7.0.41 of the CPC, was a petition, which was subject of consideration [3].

Returning to an issue about the stages of pre-trial criminal production, we should note that some situations of their flowing are not static. They can pass from one stage to another. The stages are not disappeared, and their content is changed only.

The fourth stage of pre-trial proceedings is begun with completion of checking and finalized with acceptance by performer a decision about initiation of criminal case, rejection in this or sending information (material) on investigative jurisdiction. As rule, in practice, if a performer is an inquiry officer or investigator then preliminarily decision is agreed with chief of inquiry department or prosecutor. This is not regulated by the law, but it guarantees from procedural and non-procedural "outgoings" of production.

Accepted decision is formalized with resolution on initiation of criminal case (according to art. 210 of the CPC) or resolution in rejection in institution of criminal case (in compliance with art. 212 of the CPC).

According to article 213.1 of the CPC, an inquiry officer or investigator may send information about committed or prepared crime on investigative jurisdiction without institution of criminal case, if: a) investigation of this crime is not related to their competence; b) if crime is committed on territory, which is out of bounds of their activity.

At the same time, according to article 213.2 of the CPC, prosecutor carrying out procedural leadership with preliminary investigation, may send information about crime on investigative jurisdiction without institution criminal case only if this crime committed in area, which is out of his activity and it is necessary production of testing actions on a scene crime committing in order to solve an issue about initiation of criminal case.

Thus, it is getting that in this issue a prosecutor has less rights than rights of an inquiry officer and investigator, for which the terms of necessity about production of testing actions is not stipulated by the law. In connection with this, it is necessary to change provisions of article 213 of the CPC.

In our point of view, situations with information about preparing crimes have remained in the CPC of Azerbaijan without attention.

So, article 210.5 of the CPC says that together with institution of criminal case should be accepted the measure to restraint continuing crimes, repeated crimes, conservation and guarding of crime traces, items and documents, which may have significance for a case, but there is not mentions about preparing crimes.

This is also concerned to article 213 of the CPC, which allows without indication of the terms passing information about preparing crimes on territorial or departmental investigative jurisdiction. And article 209 of the CPC provides an urgent initiation of the crimes only on the crimes stipulated in it.

It follows from the fact that an inquiry officer or investigator may re-send information about preparing terror action on investigative jurisdiction, and matter on their quick contractions depends on their logics and conscience.

In connection with this, in our point of view, article 207 of the CPC has to be supplemented with provisions concerning to terms and rules of checking of information about preparing crimes. An accent should be made on actions of their prevention. The same supplement should be included in article 210.5 of the CPC.

Therefore, it is presented to be right a decision of leadership of the MIA Azerbaijan Republic on punishment of Aliyev, Khatai Disrtict of the Police Department investigator. The investigator kept without reaction for nine days a complaint of Mrs. Fattayeva about threatening of her former husband to kill her and burn house. Only the next, tenth day, investigator sent this complaint by mail to Narimanov District of the Police Department. Order of the MIA of Azerbaijan Republic pointed out that the investigator Aliyev had urgently to undertake measures to prevent preparing crime [4].

Fifth stage of pre-trial criminal production begins with acceptance by performer a decision on information about crime and is ended with its consideration (approval) by head of inquiry department or prosecutor.

In case of approval of the decision then in dependence on its contents is made resolution on institution about criminal case and acceptance to production of it, or

resolution about rejection in initiation of criminal case or information (materials) re-send on investigative jurisdiction. Beforehand, the resolution (for consideration of accepted decision) together with materials of checking is presented to head of an inquiry department and prosecutor. Complainant is notified about accepted decision after receiving appropriate approvals.

If decision is not approved and accepted resolution is cancelled then information (material): a) is returned for additional checking; b) is made a decision on cancellation of resolution about institution of criminal case and refusal in it; c) is made a decision about cancellation of resolution on rejecting in initiation of criminal case.

Under pronouncement resolution by prosecutor about rejection in institution of criminal case, production is cancelled; under returning information for additional checking – it is continued from third stage; if it is initiated criminal case – passing into the sixth stage, which begins from acceptance a case by performer to production.

As preliminary investigation in form of inquiry including and simplified pre-trial production on obvious crime, which are not great social danger, or in form of preliminary investigation the sixth stage is continuing till appearance suspected or accused person in a case.

Our point of view in respect of particularities to appearance in pre-trial criminal production of procedural figure of suspected or recognition of an individual as such is unchangeable. The sixth stage presupposes the actions of clarification of suspicion, service upon an individual the copies of record and resolution, clarification of rights, providing the right to defence (provide with defender), interrogation as suspected, resolving an issue about measure of procedural coercion.

At this stage, in case of non-confirmation of suspicions, procedural figure of suspected may be transformed in a witness or accused.

Sometimes this stage is finalized with pronouncement about bringing a person as accused, by-passing through the stage of suspicions in a concept of requirement of valid CPC, but our suggestions.

If accused person is hidden or his location is unknown, the sixth stage is ended with resolution about search and suspending production on a case or is continuing till disclosure and detention of accused person; after that it begun the next stage of pre-trial production.

The seventh stage, in our point of view, has to include an identification of personality of accused individual, execution a record about participation of defender in a case (if he is rejected by an accused person, this should be recorded in presence of invited lawyer), and should finalized with familiarization of person with content of resolution about bringing as accused. This is testified with signatures of investigator, accused person and his defender and is indicated with date and time of filing accusation. The record contains also notes with attitude of accused person to brought accusation (agreed or non-agreed, recognizes guilt or not etc.). In this case, a process of signing of (familiarizing with) resolution is taken much less time.

But, the law (art. 224 of CPC) says that after presentation resolution to a person about bringing his as accused, an investigator clarifies him essence of presented accusation. This is testified with signatures of accused and investigator with indication of time and date of arraignment, where a defender of accused person has the right to be presented [12, p. 234].

According to article 224 of the CPC, investigator explains to accused person his rights and obligations that provided by article 91 only after arraignment, which is presented wrong.

In our point of view, a defender should be admitted to a process as soon as resolution on bringing as accused person is presented to an individual and should have the right to participate in clarification to an individual the essence of arraignment and his rights and obligations.

Therefore, time drawing up a record about admission a defender to a case is considered to be as beginning of the eighth stage of pre-trial production, and giving to accused person in presence of a defender a copy of resolution on bringing as accused and written notification about rights and obligations is a completion of the stage.

Thereafter, the ninth stage is begun. Here, in presence of a defender, accused person is explained the rights and obligations and the essence of accusation. This stage is ended with drawing up an appropriate record that signed by each participant of the action.

The tenth stage is completed with interrogation of an individual as accused person previously to, in compliance with article 233.9 of the CPC an investigator explains the right to use lawyer assistance and to refusal to give testimonies. It seems that if a defender takes part at all previous actions, and in compliance with article 233.1 of the CPC, an interrogation of accused person should be produced at once after his arraignment. In this case the next clarification of the right to use lawyer assistance is unnecessary and can be understood as coercion to refusal from it.

Moreover, according to addendum to 5-1 to article 233 of the CPC, accepted at our initiative, is not allowed interrogation accused person without participation of a defender if heretofore he wished to use lawyer assistance [13, p. 266].

According to article 233.10 of the CPC, before interrogation an investigator has to ascertain whether accused person recognizes himself guilty in bringing accusation. In our point of view, this action should be produced twice: at the seventh stage and before interrogation as after familiarization with content of resolution and consultations to a defender a position of accused person might be changed.

Speaking on completion of interrogation of accused person, we keep in mind also drawing up of interrogation record, signing of it by each participant of this investigative action.

The eleventh stage of pre-trial production is solved an issue on measure of coercion. This stage is finalized with pronouncement an appropriate resolution of investigator or with resolution of court, satisfying or rejecting in petition of an investigator or presentation of prosecutor.

The twelfth stage is lasted until statement on completion of preliminary investigation, investigative actions are continued (producing investigative and procedural actions to reach fullness and thoroughness of investigation). Depending on results of investigation at this stage can be appeared necessity to bring new

accusation, which is carried out with observance of requirements the articles 223, 224, 225 of the CPC.

Article 284 of the CPC says that considering investigation completed, an investigator notifies accused, his defender and other participants of proceedings about that. But, there is nothing indicated in the law in respect to drawing up an appropriate record on investigation completion.

In our point of view, drawing up a record on investigation completion should be obligatory as at this moment participants of proceedings have new rights and obligations, and is begun calculation of time familiarization with materials of case.

On motivated request of defender an investigator suspends familiarization with materials of case in term up to five days, after that is decided an issue on defender replacement.

The thirteenth stage includes time of familiarization with materials of case and is ended with drawing up generalized "Record of familiarization with materials of criminal case" (working out in compliance with requirements of article 286 of the CPC). If familiarization is lasted few days then the records is worked out daily. Each record contains time familiarization (in hours and minutes) and number of case sheets with which accused and his defender familiarized (the law does not stipulate this).

Beginning from March 1, 2012 period of familiarization with case materials is included in term of custody (Decision of Constitutional Court of Azerbaijan Republic from 10 October 2011). In our point of view, problems appeared in respect to this are not resolved until now.

The fourteenth stage is begun with drawing up a record on familiarization with case materials and is finalized with resolving an issue about petitions of proceedings participants. Under absence of petitions, it is begun the stage of working out indictment. If petitions are lodged or will be presented for 48 hours then this fact includes in a record and after that the stage of petitions consideration is begun. In case of appeal of investigator's resolution on petition rejection is begun the next stage. And in case of satisfaction of petition it follows a stage with familiarization with materials of a case etc. But, the law does not resolve stated problems.

In particular, the law does not stipulate possibility to lodge petitions and complaints after familiarization with case materials in order of article 288 of the CPC "Familiarization with materials of criminal case after satisfaction of petition" and appearance of new 48 hours term of appeal, during of which a case with indictment may not be send to prosecutor etc.

It is presented that the CPC should correct regulate all listed situation otherwise contrary is fraught with arbitrary interpretation.

So, being familiarized with materials of criminal case on accusation of Mahmudov, his defender lodged petition of production of some investigative actions, including interrogation of accused neighbour Sariyeva about details of search production, who had participated in process as eyewitness. Investigator satisfied the petition, but instead of witness of a search Sariyeva he interrogated witness of search Mammadova, who also took part in the search.

The defender lodged new petition, in which he substantiated the request to interrogate just Sariyeva. In particular, the defender pointed out that Sariyeva was eyewitness of falsification of searching results and could confirm this on interrogation.

Investigator did not react on a new petition and at the same day sent a case with indictment to prosecutor.

Baku Court on Grave Crimes returned the case on accusation of Mahmudov in additional investigation, pointing out above stated fact among other violations the right to defence [3].

After familiarization with case materials begins a stage of drawing up an indictment (this period is not stipulated in the law) and since then a stage of consideration of an indictment by prosecutor, which, according to article 290.3 of the CPC, should be resolved within five days that also including in period of custody.

According to article 290.3 of the CPC, at this stage prosecutor may accept one of the following decisions: 1) on adoption of indictment; 2) on seizure from indictment some clauses, requalification of a deed into easier and approval indictment with changes; 3) return criminal case to investigator with written instructions to produce

additional investigation or working out new indictment; 4) suspend a production on criminal case; 5) stop a production of criminal case [12, p. 291-292].

In addition, at this stage a prosecutor has the right to change the list of persons, which should be called to a court session.

In case of indictment approval, it is begun the following, last stage of pre-trial production on sending a criminal case to a court. At this stage prosecutor, carrying out procedural leadership by preliminary investigation, in written explains to accused and other participants of proceedings their right to lodge in future petitions and complaints and notifies about sending criminal case to a court. At the same time, he must provide accused and his defender with certified copies of indictment and its supplements in translation into a language, which accused is spoken.

Pre-trial production is finalized with passing criminal case to a court. It is confirmed with appropriate accompanying letter and signature and date receiving made by employees of a court.

Above stated shows that there is not a strict certain sequence of the stage of pre-trial production. In certain situations some of them have alternative character and depending on circumstances pre-trial production might be ended in earlier stages or the stages might be repeated.

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