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Report on the English language.

Criminal proceedings. Bodies of inquiry and their functions.

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Introduction.

Inquiry in the generally accepted sense of the word, is the initial or simplest form of investigation of crimes. The content of the acts of inquiry is a description of criminal facts or events, about which the bodies of inquiry first of all, so to speak, in hot pursuit, find out (i.e., receive by all means available to them) information about the circumstances under which the crime was committed.

In our conditions of insufficient investigative apparatus, almost all crimes pass initially through the bodies of inquiry. It has already been indicated above that the inquiry is the primary form of investigation of crimes. This definition significantly restricts the bodies of inquiry from the preliminary investigation, and makes it possible to understand the main tasks of the inquiry. The inquiry differs from the preliminary investigation in the bodies that carry them out, as well as in the scope and timing of their procedural activities. They have different amounts of procedural powers. Let's start with the fact that the inquiry is possible in relation to only those crimes of small and medium gravity that are listed in Part 3 of Article 150 of the Criminal Procedure Code of the Russian Federation and at the same time belong to the category of so-called "obvious". In practice, this means that the person who committed such a crime is known. When the preliminary investigation of a criminal case is mandatory, the body of inquiry initiates it and, guided by the rules of the criminal procedure Law, performs urgent investigative actions to establish and consolidate traces of a crime: inspection, search, seizure, examination, detention and interrogation of suspects, interrogation of victims and witnesses.

The police, the criminal investigation department and the GPU bodies, having discovered a crime in the course of their work, to protect order and security, or having received a message, complaint, statement from a victim or an eyewitness, are the first to start investigating, finding out the composition of the crime, collecting evidence, collecting evidence, searching for the criminal. Most criminal cases begin with an inquiry.\

1. General characteristics of the bodies of inquiry.

Inquiry is the simplest kind (form) of crime investigation. An inquiry is understood as a set of operational-investigative and procedural (investigative) actions carried out by specially authorized administrative bodies and officials in order to timely detect and consolidate traces of a crime and identify the persons who committed it, as well as to prevent and suppress a socially dangerous act.

According to the legislative definition enshrined in paragraph 24 of Article 5 of the Code of Criminal Procedure of the Russian Federation, bodies of inquiry should be understood as state bodies and officials authorized in accordance with the Code of Criminal Procedure to carry out inquiry and other procedural authorities1.

Taking into account the nature of the crimes committed, the place and time, as well as the subjects of criminal activity, the inquiry in criminal proceedings is dispersed among various state administration bodies. In accordance with the current legislation , the bodies of inquiry include:

- Police;

- Commanders of military units, formations and heads of military institutions;

- Bodies of the Federal Security Service;

- Heads of correctional institutions and pre-trial detention centers;

- State fire supervision bodies;

- Bodies of the Border guard Service of the Russian Federation;

- Captains of sea vessels on long voyages and heads of wintering during the absence of transport links with the wintering;

- Federal tax police authorities;

- Customs authorities;

This list of bodies of inquiry, together with the cases under their jurisdiction, is given in Article 117 of the CPC. It is not subject to arbitrary interpretation and can be changed only in accordance with the Law.

The procedural activity of the body of inquiry is based on the criminal procedure legislation and is derived from the main function of this body. Nevertheless, for some bodies, the production of inquiry directly follows from their main functions, constitutes their permanent duty, and for others it is episodic. Thus, the police have the right to initiate a criminal case for any crime. While the Law restricts the activities of other bodies of inquiry on various grounds:

- according to the elements of crimes (for example, the state fire supervision authorities have the right to make an inquiry only in cases of fires and violations of fire safety rules.);

- territorial and weather conditions (for example, the investigation is assigned to the captains of ships on long voyages or to the heads of wintering - during the absence of transport links with the wintering. They carry out investigative activities sporadically, in connection with the need that has arisen.);

- subjects of crimes (for example, commanders of military units, formations, military institutions conduct an inquiry into cases of all crimes committed by subordinate military personnel, etc.);

Analyzing Article 117 of the CPC, it can be revealed that the criminal procedure law in some cases, when determining the range of bodies of inquiry, refers to them the heads of individual institutions (chiefs commanders), and in others - state bodies (police, state fire supervision, federal tax police, etc.) without specifying which officials should conduct the inquiry.

The Law distinguishes between the concept and competence of the body of inquiry and the person conducting the inquiry.

The body of inquiry is represented by its head, who has the right to conduct an inquiry in any case referred to the competence of the inquiry, and to carry out separate investigative actions, taking any decisions provided for by law on them. In these cases, he is guided by procedural rules addressed to both the body of inquiry and the person conducting the inquiry. At the same time, the body of inquiry, represented by its chief, has the right to entrust the investigation of a criminal case to an authorized official - the person conducting the inquiry. It is worth noting that it is from this moment that this person acquires the procedural rights and obligations provided for by the criminal procedure law. Being an independent subject of the process, it thoroughly examines all the circumstances of the case and, like the court, the prosecutor, the investigator, on the basis of Part 1 of Article 71 of the CPC, evaluates evidence according to its inner conviction based on a comprehensive, complete and objective consideration of all the circumstances of the case in their entirety, guided by the law and legal awareness. The person conducting the inquiry is responsible for the legality and validity of his actions. However, his procedural independence is more limited than that of the investigator. This is manifested in the relationship with both the head of the body of inquiry and the prosecutor. If the investigator makes all decisions independently, except in cases where a prosecutor's sanction or a court decision is required, then the person conducting the inquiry makes many decisions with the consent of the head of the body of inquiry, who, when entrusting the investigation of a crime to an official, the head of the body of inquiry reserves the right to control his procedural activities and, as well as the official in fully responsible for solving procedural tasks related to the disclosure of the crime, exposing the perpetrators, ensuring compensation for material damage caused, etc. He is also responsible for the quality and timing of the inquiry or on his behalf.

2. Functions of the bodies of inquiry.

In accordance with Articles 118, parts 1 and 2, as well as Articles 127, Part 4 and Article 132, Part 3, the following duties are assigned to the bodies of inquiry:

- to carry out actions and operational search measures provided for by the criminal procedure Law in order to detect crimes and persons who committed them.

- take all measures necessary for the prevention and suppression of crime.

- to carry out the instructions and instructions of investigators in the production of investigative and investigative actions, to assist them in carrying out investigative actions.

The bodies of inquiry in the investigation of criminal cases are obliged to act in two directions. First, to perform the actions that together form the actual inquiry. And, secondly, to begin investigative actions that the criminal procedure legislation considers to be urgent. It should be noted that in the overwhelming number of criminal cases, inquiries and urgent investigative actions are carried out by the police. Urgent investigative actions are carried out by the body of inquiry immediately after the initiation of a criminal case, in which the preliminary investigation is mandatory. Only in this case is it possible to effectively detect and fix traces of a crime, as well as collect evidence that requires immediate consolidation, seizure and investigation. The inquiry is conducted with some simplification of procedural forms in comparison with the preliminary investigation and is characterized by a shortened timeframe: according to Article 223 of the Code of Criminal Procedure of the Russian Federation, the inquiry must be completed within 15 days from the date of initiation of the criminal case and before a decision is made to send the criminal case to the prosecutor. This period may be extended by the prosecutor, but not for more than another 10 days. After that, all the collected materials must be transferred to the investigator, who will conduct further preliminary investigation in compliance with all formalities.

2.1 Criminal procedural functions.

Traditionally, in science, criminal procedural functions are understood as separate areas, separate types of criminal procedural activities that differ in their orientation, i.e. the main goal that this type of activity is aimed at achieving, "around which the activities of all participants in criminal proceedings are formed."

In accordance with Article 109 Part 1 of the Code of Criminal Procedure, the bodies of inquiry are obliged to accept statements and reports about any crime committed or being prepared and make decisions on them within no more than three days from the date of receipt of the statement or message, and in exceptional cases - within no more than ten days. Applications can be accepted, both oral and written (mandatory from enterprises, institutions, organizations and officials). Oral statements are recorded in the protocol, which are signed by the applicant and the persons conducting the inquiry, if he accepted the application (Article 110 of the CPC). The protocol is also drawn up when turning himself in (Article 11 of the Code of Criminal Procedure of the RSFSR). After reviewing the received application, one of the following decisions is made:

- Initiate a criminal case in the manner proven in Article 112 of the CPC.

- To refuse to initiate proceedings. At the same time, a reasoned resolution is issued (Article 112 of the CPC).

- Submit a statement or a message on the jurisdiction or jurisdiction (Article 114 of the CPC).

- Carrying out verification actions in connection with the presence of other reasons for initiating a criminal case.

- Inquiry (This function is fixed in Article 115 of the Code of Criminal Procedure, which clearly states that after the decision on the initiation of a criminal case is issued, the body of inquiry proceeds to conduct an inquiry, guided by the rules of the criminal procedure law with the approval of the prosecutor).

- pre-trial preparation of materials in protocol form.

In cases of crimes listed in Article 414 of the CPC, the bodies of inquiry, no later than within ten days, establish the circumstances of the crime committed and the identity of the offender, receive explanations from the offender, eyewitnesses and other persons, demand a certificate of the presence or absence of a criminal record of the offender, a description from his place of work or study and other materials relevant to consideration of the case in court (part 1 of Article 415). The circumstances of the commission of the crime are recorded in the protocol, which is drawn up in accordance with Article 415 Part 3 of the Criminal Procedure Code of the RSFSR.

- conducting investigative and investigative actions on behalf of investigators (Articles 127, 132, 196 of the Criminal Procedure Code of the RSFSR).

- participation in individual investigative actions conducted by investigators to provide assistance (This function has found its consolidation in Article 127 Part 4 of the CPC, which states: an investigator in cases under investigation has the right to demand assistance from the bodies of inquiry in the conduct of individual investigative actions. He submits his request in writing, and it is mandatory for the bodies of inquiry-doable).

2.2 Operational and investigative functions.

As for the operational-investigative activities of the bodies, it seems to me that it would be necessary to first list those state bodies whose powers include operational-investigative activities. Thus, in accordance with Article 13 of the Federal Law on Operational Investigative Activities on the Territory of the Russian Federation, the right to carry out operational investigative activities is granted to operational units:

Internal affairs bodies of the Russian Federation.

Bodies of the Federal Security Service.

Federal tax police agencies.

Federal bodies of state protection.

Bodies of the Border Service of the Russian Federation.

Customs authorities of the Russian Federation.

Intelligence Services of the Russian Federation.

Ministry of Justice of the Russian Federation (item 8 was introduced by Federal Law No. 117-FZ of 21.07.98)

As can be seen from this list, not all bodies of inquiry carry out operational investigative activities. This activity is not possessed by the heads of individual institutions (commanders of military units, formations, heads of military institutions, captains of sea vessels, heads of wintering grounds), as well as state fire supervision bodies. On the basis of Article 2 of the same law, the bodies engaged in operational investigative activities pursue the following tasks:

- identification, prevention, suppression and disclosure of crimes, as well as identification and identification of persons preparing, committing or committing them;

- carrying out the search for persons hiding from the bodies of inquiry, investigation or court, evading criminal punishment, as well as the search for missing persons;

- obtaining information about events or actions that pose a threat to the state, military, economic or environmental security of the Russian Federation.

At the same time, in order to implement the decisions assigned to them, the above-mentioned bodies need to carry out a number of operational investigative measures:

A survey of citizens.

Making inquiries.

Collecting samples for comparative research.

Verification purchase.

Research of objects and documents.

Observation.

Identification of personality.

Inspection of premises, buildings, structures, terrain areas and vehicles.

Control of postal items, telegraphic and other messages.

Wiretapping of telephone conversations.

Removing information from technical communication channels.

Operational implementation.

Controlled delivery.

Operational experiment.

3. Types of inquiry

3.1 Inquiry into cases in which the investigation is mandatory.

In accordance with Part 1 of Article 119 of the CPC, if there are signs of a crime for which the preliminary investigation is mandatory, the body of inquiry initiates a criminal case and, guided by the rules of the criminal procedure law, performs urgent investigative actions to establish and consolidate traces of the crime. Article 119 refers to the number of investigative actions that the body of inquiry can perform as urgent, inspection, search, seizure, examination, detention and interrogation of suspects, interrogation of victims and witnesses.

Urgent investigative actions include such actions to detect and consolidate evidence, which are carried out in hot pursuit, that is, immediately, since delay in their production may lead to the disappearance, damage, loss, falsification of evidence. The list of investigative actions that the bodies of inquiry have the right to perform as urgent is exhaustive and is not subject to extensive interpretation. This means that in cases in which a preliminary investigation is mandatory, the bodies of inquiry are not entitled to perform other investigative actions. The practice of the preliminary investigation bodies shows that the legislation regulating the powers of the bodies of inquiry for the production of urgent investigative actions needs to be improved. The law should have fixed a general rule according to which the bodies of inquiry would be given the right to carry out investigative actions to establish and consolidate traces of a crime that will be urgent in a particular case, since it is impossible to determine in advance which action will be urgent in a particular case. Of course, we are talking about those investigative actions that are aimed at finding, collecting, securing evidence in hot pursuit. In order to ensure the prosecutor's supervision over the legality, the body of inquiry is obliged to immediately notify the prosecutor of the discovery of a crime and the investigation initiated (Part 2 of Article 119 of the CPC). In accordance with Article 121 of the CPC, an inquiry in this form must be completed no later than ten days from the date of initiation of a criminal case. This period is not subject to extension. The prosecutor may give instructions on the referral of the case to the investigator before the expiration of the ten-day period. If the body of inquiry performs urgent investigative actions earlier than this period, it is obliged to immediately forward the case to the investigator, without waiting for the prosecutor's instructions or the expiration of the ten-day period. After the case is transferred to the investigator, the body of inquiry acts depending on the result of the inquiry. If a person who has committed a crime has been discovered during the inquiry, the body of inquiry may carry out investigative or investigative actions in the case only on behalf of the investigator. If it was not possible to identify the person who committed the crime during the inquiry, the body of inquiry and after the transfer of the case to the investigator is obliged to continue operational search measures to identify the criminal, notifying the investigator of their results (Part 4 of Article 119 of the CPC). Investigative actions may be carried out by the body of inquiry in all cases only on behalf of the investigator.

The body of inquiry has no right to suspend or terminate a case in which a preliminary investigation is mandatory, since its competence in cases of this category is exhausted by the production of urgent investigative actions and the issuance of a resolution on the referral of the case to the investigator (Article 124 of the CPC). Thus, an inquiry into cases in which a preliminary investigation is mandatory consists of:

- In initiating a criminal case and conducting urgent investigative actions, when necessary, in order to establish and consolidate the traces of a crime;

- In carrying out the instructions and instructions of the investigator on the production of operational search and investigative actions;

- In assisting the investigator in carrying out certain investigative actions.

3.2 Inquiry into cases in which the investigation is not necessary.

The situation is different with the investigation of crimes for which a preliminary investigation is not necessary. In this case, the inquiry practically replaces the preliminary investigation, and the materials of the inquiry are the basis for considering the case in court. Cases investigated in the form of an inquiry include cases of crimes listed in Part 1 of Article 126 of the CPC. For some of the crimes listed in this article, a protocol form of pre-trial preparation of materials or private prosecution proceedings is possible in accordance with Article 414. In the form of an inquiry, for example, cases of crimes provided for in Part 1 of Article 112, Articles 121, 122, part 2 of Article 213, etc. are investigated. The Criminal Code of the Russian Federation. In accordance with the law (Article 120 of the CPC), in cases in which a preliminary investigation is not necessary, the body of inquiry initiates a case and takes all measures provided for by the criminal procedure law to establish all the circumstances to be proved in a criminal case (Article 68 of the CPC). When conducting an inquiry in cases in which a preliminary investigation is not necessary, the body of inquiry is guided by the rules established for the preliminary investigation, with the exceptions specified in Part 2 of Article 120 of the CPC. These include: restriction of the rights of the victim, the civil plaintiff, the civil defendant and their representatives in terms of familiarization with the case materials at the end of the inquiry, as well as restriction of the rights of the bodies of inquiry when appealing the prosecutor's instructions. That is, the rules established by Part 2 of art. do not apply to the bodies of inquiry. 127 of the CPC, which refers to the investigator's right to appeal the prosecutor's instructions to a higher prosecutor. Unlike the investigator, the body of inquiry, in case of disagreement with the instructions of the prosecutor, has the right to appeal them to a higher prosecutor, without suspending the implementation of these instructions. These differences do not have sufficient grounds. Depriving the victim, the civil plaintiff and the civil defendant of the right to familiarize themselves with the case materials after the end of the inquiry contradicts the general rule on equality of rights of participants in the process, which should take place in any form of investigation. Depriving the person conducting the inquiry of the right to disagree with the prosecutor's instructions on the main issues of the direction of the investigation contradicts the principle of evaluating evidence by internal conviction (Article 71 of the CPC), which should be guided by the person conducting the inquiry. In accordance with part 1 of art . 47 of the Code of Criminal Procedure, the defender during the investigation is allowed to participate in the case from the moment of the indictment, and in the case of the detention of a person suspected of committing a crime, or the application of a preventive measure to him in the form of detention before the indictment - from the moment of the announcement of the protocol of detention or the decision on the application of this preventive measure. If a case is initiated and an inquiry is conducted on the cases of minors, mute, deaf, blind and other persons who, due to their physical and mental disabilities, cannot exercise the right to protection themselves, as well as persons who do not speak the language in which the proceedings are conducted, the participation of a defender is mandatory from the moment of detention or election as a preventive measure detention.

The inquiry must be completed no later than one month from the date of initiation of a criminal case, including during this period the preparation of an indictment or a decision to terminate or suspend the case (Article 121 of the CPC). The specified period may be extended by the prosecutor directly supervising the investigation, but not for more than one month. In exceptional cases, the term of the inquiry in the case may be extended according to the rules specified in Article 133 of the CPC and established for the preliminary investigation. In accordance with this article, the investigation may be extended by the district, city prosecutor, military prosecutor of the garrison, association, connection and equivalent prosecutors for up to three months. The inquiry in the cases specified in the law may be carried out in cases of crimes listed in Article 414 of the CPC, for which the preparation of materials for consideration of the case in court, as a rule, is carried out in a protocol form. This may be the case in cases provided for by Article 416 of the CPC:

- initiation of a criminal case by the head of the body of inquiry, if it is impossible to find out the essential circumstances of the commission of the crime within ten days;

- the return of the case by the court to clarify significant additional circumstances, if they cannot be established at the court session;

- the return by the prosecutor or the court of materials to clarify the essential additional circumstances necessary for the initiation of the case. In these cases, the inquiry must be completed no later than twenty days from the date of initiation or return of the criminal case.

Conclusion.

Consideration of the issues of the activities of the bodies of inquiry makes it possible to learn not only about the law enforcement activities of law enforcement agencies of the Russian Federation, but also about the work of the mechanism of state coercion in general. A detailed analysis clearly shows the system of law enforcement bodies that has developed in Russia: their practice and interaction. This knowledge is especially important for lawyers who are directly related to the protection and application of law. Now the inquiry in its functions does not differ significantly from the investigation: interrogators investigate many episodic cases with a large number of both victims and suspects. In addition to investigating criminal cases, investigators carry out such criminal procedural functions as reviewing and resolving statements (reports) about crimes. When conducting an inquiry, interaction is carried out with other departments of the Department of Internal Affairs, the Prosecutor's office, the investigation and state authorities. The work of the inquiry is based on the principles of respect for human and civil rights and freedoms, as well as legality and humanism.

This work made it possible to identify not only the general principles of the activities of the bodies of inquiry, but also to determine the features inherent in each body and the specifics of its work.

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