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Liability For The Crimes Of Misappropriation Or Embezzlement In The Criminal Legislation Of The Republic Of Uzbekistan (Specific features of procedural documents in the preliminary investigation)

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Abstract

This article analyzes the essence of procedural documents prepared during the preliminary investigation process, their role in criminal proceedings, and the procedure for their formalization from scientific-theoretical and practical perspectives. The study broadly examines the concept of procedural documents of preliminary investigation, their legal nature, the general requirements imposed on such documents, and the criteria for their classification. In addition, the procedural and legal foundations for drafting the most commonly used procedural documents in investigative practice — decisions, protocols, auxiliary procedural documents, and indictments — are analyzed in detail.

Keywords: Preliminary investigation, procedural documents, protocol, decision, indictment, criminal procedure, procedural formalization

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Procedural documents formalized in criminal proceedings, by their essence and content, constitute the legal foundation of a criminal case and possess strategic importance in ensuring fair justice. Every document drafted during both judicial and pre-trial stages must comply not only with

the strict forms and requisites established by criminal procedural legislation, but also with the requirements of logical consistency and legality. Each procedural document has its own specific legal necessity, as it serves as the sole means of confirming the legality of a particular procedural action. In this regard, the authorized subject preparing the document (investigator, inquiry officer, prosecutor, or judge) must act strictly within the limits of his or her authority and comply with the procedural conditions and deadlines established by law.

In the legal sense, a document is an official written instrument that certifies a particular factual circumstance, creates or confirms rights and obligations, and serves as one of the important sources of evidence in the process of procedural proof. The legal force of a document depends not only on its content, but also directly on the presence of mandatory requisites established by law, such as a stamp, signature of the authorized person, seal, date, serial number, and indexes. The existence of these requisites is regarded as a necessary element ensuring the authenticity of the document.

A document is a material object in which information is expressed.

A document is a carrier of information.

A document is understandable information recorded on any material object by any method.¹

In criminal proceedings, the formation of the concept of a “document” is closely connected with its use in the process of proof. In legal theory, the term “written evidence” is also applied. However, most procedural scholars do not regard the concepts of a document and written evidence as identical. According to N. Vukovskiy, written documents in criminal cases may vary according to their significance, primarily reflecting the elements of a crime, events related to the case, actions or circumstances, and testimonies of participants. It is necessary to highlight the following characteristics of procedural documents in preliminary investigation:

They constitute a written form of recording information.

¹ *Criminal Procedural Law: Textbook / Executive editor: Doctor of Legal Sciences, Professor G'.A. Abdumajidov. – Tashkent: Adolat, 2013. – P. 156. Tojiyev J. Document Studies and Working with Official Texts: Study guide. – Tashkent: Cho'lpon, 2018. – pp. 22–24.*

The fact that the information recorded in a procedural document is presented in written form is of significant importance. This is because the information contained therein must be uniformly perceived and understood by the persons to whom it is addressed. Only written symbols ensure the possibility of precise understanding of information. The text of a document may be prepared by hand, typewriter, or computer. Schemes, photographs, audio recordings, films, and video materials may serve as annexes or integral parts of procedural documents. In necessary cases, the use of drawings, schemes, and video recordings contributes to greater accuracy and reliability of the information being presented. Therefore, such materials often constitute an inseparable part of the document. For example, a record of crime scene inspection together with attached photographs.

They possess a special structure established by law. Procedural documents in preliminary investigation must comply with a specific form deriving from the norms of criminal procedural legislation and satisfy the relevant structural requirements. Depending on the type of procedural document, its mandatory structural elements also differ. For instance, a protocol must contain information regarding the participants of the investigative action; confirmation that their rights and obligations were explained; the place, time, conditions, procedure, and results of the investigative action; descriptions of material objects discovered and their features significant to the case; facts which participants requested to be certified; their testimonies, explanations, and opinions concerning the causes of the event; motions, complaints, and recusals submitted by them; as well as violations of procedural rules and measures taken to eliminate or prevent such violations (Article 90 of the Criminal Procedure Code). Depending on the type of investigative action, protocols must also include additional information required by the relevant articles of the Criminal Procedure Code (for example, Article 134 — protocol of verification of testimony at the scene, Article 141 — inspection protocol, etc.).

A resolution must indicate when, where, and by whom it was issued (official position, special rank, surname), the factual circumstances of the case, the conclusions reached, the grounds upon which the decision was made, and the article of the Criminal Procedure Code serving as the legal basis for such decision.

The drafters possess relevant authority. Authority refers to the possession by an individual or legal entity of a specific legal status. It may also be understood as the totality of rights and obligations of the person

drafting the document with regard to presenting certain information or certifying facts. The limits of authority are determined by the functions and duties of responsible participants in the process (prosecutor, investigator, head of the investigation department, division, subdivision, group, and their deputies). Procedural documents of preliminary investigation are drafted by officials authorized to conduct preliminary investigations. In cases предусмотренные by legislation, such documents may also be prepared by persons entrusted with carrying out assignments of the investigator.

They possess a certifying character. In addition to the element of authority, procedural documents of preliminary investigation must also certify or establish legally significant circumstances through their content. For example, in a protocol of identification, the involvement of a suspect in the commission of a crime may be confirmed or disproved through identification by the victim.

The types of procedural documents are clearly defined by criminal procedural legislation (resolution, protocol, indictment, submission, receipt, demand letter, notification, etc.).

Specificity in drafting procedural documents. The formation of procedural documents in preliminary investigation reflects the circumstances relevant to the case through the perception and understanding of the author. Procedural documents are intended to preserve information about facts.

Procedural documents are capable of preserving recorded information in an unchanged form for a long time.

Once signed, certified, and attached to the case materials, no amendments may be introduced into them. A document cannot be replaced by another similar document. For example, a search cannot be conducted on the basis of a resolution on seizure. They are aimed at achieving a specific purpose. The reliability of a procedural document represents its axiological assessment from the viewpoint of the correctness of a procedural decision adopted on its basis. Justice must serve as the foundation for evaluating the reliability of legal documents, as this demonstrates equality of all persons before the law and fair justice. Thus, procedural documents at the stage of preliminary investigation must satisfy the requirements of legality, substantiation, and motivation.

In our opinion, procedural documents of preliminary investigation should be classified according to the degree of their legal regulation, their entry into legal force, the relevant subject involved, and other aspects.

According to the degree of legal regulation, procedural documents of preliminary investigation may be classified as follows:

procedural documents fully regulated by legislation (the Criminal Procedure Code and other laws);

procedural documents deriving from legislation;

procedural documents regulated by subordinate normative acts;

procedural documents developed in practice.

Examples of procedural documents fully regulated by legislation include resolutions on bringing a person as an accused (Article 361 of the Criminal Procedure Code), appointment of an expert examination (Article 180, part 1), and termination of criminal proceedings (Article 374).²Resolutions, interrogation and investigative action protocols, indictments (Article 379 of the Criminal Procedure Code), and other documents belong to this category. Most of these documents are not only mentioned in the Criminal Procedure Code, but are also strictly regulated therein.

The following are considered procedural documents deriving from legislation: resolutions on exhumation of a corpse (Article 148 of the Criminal Procedure Code), conducting an experiment (Article 154), recognition of an object as physical evidence and attaching it to the criminal case (Article 207), release of a detained person (Article 234), transfer under the supervision of the command of a military unit, formation, military institution, or military educational establishment (Article 254), recognition as a civil plaintiff (Article 254), refusal to initiate criminal proceedings (Article 333), forwarding an application or report according to investigative jurisdiction (Articles 330 and 335), recognition of a representative of a victim, civil plaintiff, or civil defendant (Article 62), protocols concerning waiver of defense counsel (Article 52), and familiarization with criminal case materials (Article 376), as well as other documents. These documents are mentioned in the Criminal Procedure

² M.G. Esanov, M.H. Obidov, Sh.P. Alaev. *Investigator (Professional Qualities of the Investigator, Procedural Rights and Powers, Methods of Conducting Certain Investigative Actions, and Samples of Preliminary Investigation Procedural Documents)* / under the general editorship of M.A. Mirzaev. – Tashkent: G‘afur G‘ulom Publishing and Printing Creative House, 2011. – P. 127.

Code; however, their form, structure, content, and even, in some cases, their titles are not specifically defined. Their structure and content have therefore been developed in practice.

Procedural documents developed in practice include, for example, resolutions clarifying the amount of material damage, clarifying a person's personal data (Articles 36 and 98 of the Criminal Procedure Code), and involving a translator in participation in proceedings (Articles 36 and 72). Such resolutions are adopted in investigative practice on the basis of Article 36 of the Criminal Procedure Code. According to their legal significance, procedural documents in preliminary investigation are divided into principal and auxiliary documents depending on whether they resolve the main issues of the criminal case (whether a crime occurred, whether the accused committed it, and whether he or she is guilty) or auxiliary matters. Principal documents include those that contain final conclusions concerning the entire case, a separate part thereof, or a specific person, based on the assessment of the collected evidence (for example, an indictment or a resolution terminating criminal proceedings). Procedural documents facilitating the resolution of the main issues are auxiliary in nature. These include resolutions on conducting investigative actions and documents recording their results (for example, resolutions on search, seizure, or examination, and the corresponding protocols).

According to their function, criminal procedural documents may be classified into the following groups:

- documents determining the direction of the investigation (resolutions terminating criminal proceedings, indictments);
- documents aimed at securing evidence (resolutions on conducting searches or seizures);
- documents aimed at recording evidence (protocols of investigative actions);
- documents determining the procedural status of participants (resolutions recognizing a person as a victim, civil plaintiff, or civil defendant);
- documents aimed at ensuring the rights of participants in proceedings (protocols on acquainting the accused with a resolution appointing an expert examination, protocols on acquainting the victim, accused, and defense counsel with case materials);

-other documents (submissions, receipts, summonses).

According to the aspects strictly regulated by criminal procedural legislation, procedural documents may be divided into: documents whose form and structure are strictly prescribed by law (protocols); procedural documents whose structural elements are defined by law (indictments, resolutions); procedural documents that do not possess a strictly prescribed form and structure and whose names alone are indicated in legislation (submissions, summonses).

According to the subject issuing them, procedural documents in preliminary investigation may be divided into: documents of the investigator and head of the investigation department; documents of the inquiry officer and head of the inquiry body; procedural documents of the prosecutor.

According to their legal force, procedural documents may be classified into: documents entering into force from the moment of issuance (for example, resolutions terminating criminal proceedings); documents requiring approval (sanction) by the prosecutor (for example, resolutions on searches or exhumation); documents requiring the prosecutor's consent (for example, an investigator's resolution on transferring a convicted person or terminating criminal proceedings). According to their functional significance, criminal procedural documents in preliminary investigation may be grouped as follows: documents ensuring the functions of defense (protocols acquainting the accused and defense counsel with case materials or with a resolution appointing an expert examination); documents related to securing a civil claim (resolution on involving a person as a civil defendant); documents related to suspension, renewal, or termination of preliminary investigation (resolutions on suspension of investigation, termination of criminal proceedings, or referral of the case to court); documents connected with the investigator's preventive activities (submissions concerning elimination of causes and conditions facilitating the commission of a crime).

A resolution is a procedural document in which the investigator states and substantiates the performance of a particular procedural action during the preliminary investigation. A resolution represents the investigator's conclusion or determination on the most significant issues arising in the course of conducting and completing the preliminary investigation. It is also a procedural document through which the inquiry body or investigator formulates and justifies decisions adopted during the investigative process. Thus, a resolution is a procedural document adopted by the

investigator in the course of investigating a criminal case. A document reflecting a decision (conclusion) adopted by an authorized person takes the form of a resolution at the stage of preliminary investigation. In legal theory, it is defined as a procedural document issued by an inquiry officer, investigator, or prosecutor at the stages of inquiry and preliminary investigation after reaching a necessary conclusion regarding the case. A resolution always possesses a binding character, and the law guarantees its mandatory execution.

The resolutions adopted during preliminary investigation may be grouped as follows:

Resolutions related to the conduct of criminal proceedings (for example, resolutions on suspension of preliminary investigation, resumption of preliminary investigation, separation of criminal cases, or consolidation of criminal cases);

Resolutions expressing conclusions and determinations on conducting procedural actions aimed at collecting evidence (for example, resolutions on seizure or search, examination, investigative experiment, or appointment of an expert examination);

Resolutions determining the procedural status of participants in proceedings (for example, resolutions recognizing a person as a victim, involving a person as a suspect or accused, or involving a person as a civil plaintiff or civil defendant);

Resolutions on the application, cancellation, or modification of preventive measures (for example, motions seeking detention as a preventive measure or resolutions applying bail as a preventive measure);

Resolutions concerning the application, cancellation, or modification of other procedural coercive measures (for example, compulsory appearance, suspension of an accused from office, cancellation of suspension from office, or placement of a person in a medical institution);

Resolutions expressing the completion of preliminary investigation or decisions concerning a specific fact or person (for example, resolutions terminating criminal proceedings or referring the case to court for application of compulsory medical measures or reconciliation of the parties);

Resolutions adopted on motions submitted by participants in proceedings (for example, resolutions rejecting motions filed by a suspect or accused, or resolutions permitting participation of one of the close relatives or legal representatives of the suspect, accused, or defendant alongside an адвокат as a defense counsel).

During the investigation of a criminal case, nearly one hundred procedural resolutions may be adopted.

Taking into account both the theoretical and practical significance of protocols of preliminary investigation, criminal procedural law has not paid sufficient attention to studying their essence and procedural-legal nature. In our view, protocols are among the most rapidly developing types of evidence, and therefore require comprehensive examination. Protocols of investigative actions constitute the principal proof that the circumstances of the case have been fully examined.³

Indeed, protocols, resolutions, and other procedural documents are regarded as the mirror of criminal case investigation. Precise reflection of all legally significant circumstances and facts in a protocol enhances the authority of inquiry officers, investigators, and prosecutors, strengthens trust in them, and the simultaneous audio recording of protocols contributes to procedural discipline among participants. Since protocols constitute one type of evidence, special emphasis is placed on protocols of investigative actions, and they are often understood as documents recording the results of investigative actions. "Protocols of investigative actions are understood as written documents and their annexes prepared by an inquiry officer, investigator, or prosecutor in the manner established by law during actions aimed at collecting and verifying evidence, in which circumstances significant for the case are recorded." Criminal procedural legislation establishes the procedure for conducting investigative actions. Protocols and Representations (Taqdimnoma).

1. Classification of Investigation Protocols

According to A.Kh. Rakhmonkulov, although over forty types of protocols can be drawn up, they generally fall into three main categories based on the nature of the investigative action:

- Interrogation and Confrontation Protocols: These record the statements of suspects, the accused, victims, and witnesses, as well as the results of face-to-face confrontations.

³ Rakhmonqulov A.X. *Preliminary Investigation in Internal Affairs Bodies*. Revised and supplemented textbook. – Tashkent: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, 2022. – P. 82.

- Evidence-Based Protocols: These serve as independent sources of evidence. They document findings from crime scene inspections, physical examinations, searches, seizures, detentions, experiments, and identifications.
- Procedural Compliance Protocols: These are created specifically to record the fulfillment of various requirements set by criminal procedural law.

2. Other Procedural Documents

In addition to protocols, investigators utilize a variety of documents tailored to the specific circumstances of the crime and the identity of the accused. These include:

- Notices and Summonses: Notifications, subpoenas, and written obligations.
- Requests and Petitions: Applications, motions, and written objections.
- Directives: Written assignments, instructions, and demands.
- Receipts: Used for confirming the delivery or acceptance of documents/property.

The Purpose of these Documents: They ensure the investigator makes correct decisions, protect the rights of participants, guarantee the fulfillment of procedural obligations, and ensure the preservation of physical evidence.

3. The Representation (Taqdimnoma)

A Representation is a critical procedural document issued by an investigator or prosecutor to address the root causes of a crime.⁴

Definition and Purpose

It is a written conclusion based on objective evidence collected during the investigation. Its primary goal is to identify and eliminate the causes and conditions that allowed the crime to occur. It can also be used to recognize a citizen's exemplary performance of social duties or to request the application of an amnesty act.

Structure of a Representation

A Representation typically consists of two main parts:

I. Introductory Part:

1. The name/address of the recipient (organization, official, or community body).
2. The title of the document.
3. The date and place of creation.
4. The name, position, and rank of the official issuing the document.

⁴ Rakhmonqulov A.X. *Preliminary Investigation in Internal Affairs Bodies*. Revised and supplemented textbook. – Tashkent: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, 2022. – P. 82.

5. The criminal case number.

II. Descriptive-Reasoning Part:

1. A brief description of the circumstances of the crime.
2. A detailed description of the identified causes and conditions that facilitated the crime.
3. The evidence confirming the existence of these causes and conditions.

1. Core Definitions in Criminal Procedure

- Criminal Procedural Document: A document in which a competent official, while adhering to the legally established procedural form, records factual information or decisions significant to a case.
- Procedural Document of the Preliminary Investigation: A document that expresses the actions and decisions of an official authorized to conduct a preliminary investigation, formulated according to the requirements of criminal procedural law.
- Procedural Documentation: The activity performed by authorized persons, based on criminal procedural rules, aimed at recording procedural actions, decisions, and the entire process and results of an investigation within procedural documents for the purpose of solving crimes and ensuring justice.

2. The Bill of Indictment (Ayblov xulosasi)

The Bill of Indictment is a procedural document issued based on the results of the preliminary investigation. It reflects the investigator's internal conviction—grounded in a comprehensive and full study of the case circumstances—that the evidence is sufficient to support a charge.

- Function: It defines the scope of the judicial trial regarding the person and the subject of the charge.
- Importance: It systematizes all materials of the preliminary investigation and allows the accused to prepare for the trial in a timely manner.
- Requirements: It must be objective, legally grounded, and must strictly adhere to stylistic and grammatical standards.

3. Proposed Legislative Amendments

To simplify the process of documenting investigations and clarify legal requirements, the following amendments to the Criminal Procedural Code (CPC) are proposed:

Amendment to Article 90 (Part 4)

It is proposed to add a fourth part stating: "Protocols of investigative actions shall be drawn up during the investigative action or immediately

upon its completion. Protocols may be prepared by hand or through the use of technical means."Amendment to Article 91 (New Edition)⁵

To increase the efficiency of using scientific and technical means for recording evidence, a new version of Article 91 is proposed:"Alongside the preparation of a protocol for recording evidence, methods such as audio recording, video recording, filming, photography, the preparation of molds/casts, copying, the creation of plans and diagrams, and other methods of reflecting information may be employed."

LIST OF USED LITERATURE

I. Leadership Literature

1.1 Shavkat Mirziyoyev. Together We Will Build a Free and Prosperous, Democratic State of Uzbekistan. – Tashkent: O‘zbekiston, 2017.

II. Normative-Legal Acts

2.1 Constitution of the Republic of Uzbekistan. – Tashkent: O‘zbekiston, 2023.

2.2 Criminal Procedural Code of the Republic of Uzbekistan. – Tashkent: Adolat, 2023.

2.3 Law on Courts // Collection of Legislative Acts of the Republic of Uzbekistan, 2021.

2.4 Decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan. – Tashkent, 2022.

2.5 Rustamboev, M.Kh. Criminal Procedural Law. Textbook. – Tashkent: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, 2022. – 456 p.

2.7 Criminal Procedural Law: Textbook / Editor-in-Chief: Doctor of Law, Prof. G‘.A. Abdumajidov. – Tashkent: Adolat, 2013. – P. 156.

2.8 Tojiyev, J. Document Studies and Working with Official Texts: Study Guide. – Tashkent: Cho‘lpon, 2018. – P. 22-24.

III. Special Literature

3.1 Criminal Process: Textbook / Collective of authors. – Tashkent: TSUL (Tashkent State University of Law), 2022.

3.2 Criminal Procedural Documents: Study Guide. – Tashkent: Adolat, 2021.

3.3 Investigative Actions and Their Formalization. – Tashkent: TSUL, 2020.

3.4 Theory of Evidence in Criminal Proceedings. – Tashkent: Legal Literature, 2019.

⁵ Inogomjonova Z.F. *Procedural Documents in Criminal Cases*. Supplemented edition. – Tashkent: TSUL Publishing House, 2021. – P. 18.

3.7 Esanov, M.G., Obidov, M.H., Alaev, Sh.P. The Investigator (Professional Qualities of the Investigator, Procedural Rights and Powers, Methods of Conducting Certain Investigative Actions, and Samples of Preliminary Investigation Procedural Documents).

3.8 Esanov, M.G., Obidov, M.H., Alaev, Sh.P. Investigative Activity: Professional Qualities, Powers, and Procedural Documents. Revised Edition. – Tashkent: Academy, 2022. – P. 154.

3.9 Davletov, A.J. Prosecutorial Supervision. Textbook. – Nukus: Karakalpak State University Publishing House, 2021. – 169 p.

3.10 Criminal Procedural Law of the Russian Federation: Textbook / Ed. L.V. Golovko. – Moscow: Statut, 2023. – P. 197.

IV. Internet Resources

- 1. <http://www.lex.uz> – National Database of Legislation of the Republic of Uzbekistan.**
- 2. <http://press-service.uz/en> – Official website of the President of the Republic of Uzbekistan.**
- 3. <http://natlib.uz> – National Library of Uzbekistan named after Alisher Navoi.**
- 4. <http://akadmvd.uz> – Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan.**
- 5. <http://ziyonet.uz> – Ziyonet Educational Portal.**
- 6. <http://utube.uz> – Utube.uz Educational Video Portal.**
- 7. <http://book.uz> – Electronic Literature Library.**
- 8. <http://www.xs.uz> – "Xalq so'zi" (People's Word) Newspaper.**