

Russian and Foreign Experience in Implementing Departmental Control and Prosecutor's Supervision when Verifying Crime Reports

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Summary

The article examines the stage of verification of a crime report from the standpoint of the need for its legislative regulation. Moreover, it investigates the international experience in this field. The existing procedural models are described in detail on the example of the neighboring and faraway countries. An analysis of the provisions of the current criminal procedure law of Russia and foreign experience allowed the authors to identify existing problems in the implementation of departmental control and prosecutorial supervision at the stage of verifying a crime report. The aim of the study is to develop theoretical provisions and recommendations regarding the implementation of departmental procedural control and prosecutorial supervision over the activities of the investigator during the verification of reports of crimes, based on the study of experience, both in Russia and in a number of countries of the near and far abroad, which could find their reflection in law enforcement practice, as well as aimed at improving the current criminal procedure legislation. The authors substantiated the theory that a detailed examination of the foreign procedural foundations of checking a crime report will allow us to form the most suitable model for checking a crime report for our state, taking into account all possible features and successfully implement it into the current criminal procedural law of the Russian Federation.

Keywords:

stage of initiation of a criminal case, pre-trial proceedings, head of an investigative body, investigator, investigative actions.

1. Introduction

The relevance of the research topic is determined by the need to improve the criminal procedural legislation at the present stage to resolve a number of existing problems in the field of departmental control and prosecutor's supervision over the procedural activities of an investigator at the stage of initiating a criminal case.

The stage of verification of a crime report is currently one of the most controversial and discussed in the Russian criminal procedural science. First of all, this is due to the fact that the criminal procedure law in force in Russia

consolidates an ever-wider range of powers that are possessed in accordance with Part 1.2 of Art. 144 of the Code of Criminal Procedure of the Russian Federation, the head of the investigative body, the investigator, the interrogator, the body of inquiry.

2. Materials and Methods

As the main method in the process of writing the study, we used the general scientific systemic method of cognition, which made it possible to comprehensively consider and fully analyze the Russian and foreign experience in the implementation of departmental control and prosecutor's supervision over the activities of the investigator to verify reports of crimes.

The method of a systematic approach allowed us to consider the Russian and foreign experience in the implementation of departmental control and prosecutorial supervision over the activities of the investigator to check reports of crimes, as well as to study the interaction of the head of the investigative body and the investigator at this stage of criminal proceedings.

The historical and legal method made it possible to study the genesis and legal nature of departmental control and prosecutor's supervision over the activities of an investigator to check reports of crimes, both in Russia and in a number of countries of the near and far abroad.

The use of the comparative legal method made it possible to study in detail domestic and international legislation concerning the implementation of departmental control and prosecutorial supervision over the activities of an investigator to check reports of crimes. Using this method, it was possible to identify the existing problems in this area,

as well as to formulate proposals for improving the criminal procedure legislation of the Russian Federation.

The use of methods of analysis and synthesis revealed the existing problems in the law enforcement practice of investigative bodies in the implementation of departmental control and prosecutor's supervision over the activities of an investigator to check reports of crimes.

The formal-logical method allowed us to analyze the procedural independence of the investigator in the course of checking reports of crimes and put forward proposals for improving legislation in this area.

As a result of the application of this methodology, we obtained new knowledge about the mechanism of departmental procedural control and prosecutorial supervision over the procedural activities of an investigator when checking reports of crimes, as well as trends in improving legislation in order to optimize the work of investigative units at the stages of initiating a criminal case. It should be noted that the proposed changes in the norms of the Criminal Procedure Code of the Russian Federation should be appropriately reflected in the training courses of criminal procedural law taught within the framework of bachelor's and master's programs, which will require additional "actualization of the need to create and maintain a humanitarian component in a higher technical educational institution, allowing students to expand the circle of their worldview" [1, p. 99].

3. Results Analysis

In accordance with Part 1 of Art. 144 of the Code of Criminal Procedure of the Russian Federation: "an interrogator, an inquiry body, an investigator, a head of an investigative body is obliged to accept, check a message about any committed or impending crime and, within the competence, make a decision on it within three days from the date of receipt of the said message". Also, the specified period in some cases is subject to extension to ten and thirty days, respectively. This is primarily due to the need to conduct investigative actions, the conduct of which became possible before the initiation of a criminal case, which causes considerable concern for a number of proceduralists. § O.V. Michurina [2, p. 58] points out that "by allowing the production of all investigative actions before the initiation of a criminal case, we will lose the main purpose for which this stage was created, the boundaries of distinction with the subsequent stages of criminal proceedings, namely preliminary investigation, will be erased". Many scientists support this point of view, and some express the idea that it is necessary to leave only the inspection of the scene of the incident as the only investigative action, which can be carried out before the initiation of a criminal case. §

We agree with the opinion that such an extension of the powers of competent persons to carry out verification of a crime report is still unreasonable and, moreover, raises a number of problems. For example, the extension of the verification period to thirty days greatly delays the verification stage, in addition to everything else, it allows interested persons who have information about the verification to hide from law enforcement agencies, as well as destroy the instruments of crime and other relevant information. Meanwhile, no procedural measures can be applied to them, since a criminal case has not yet been initiated. Hence, the following problem is evident - the lack of the legal status of persons in respect of whom the examination of involvement in the committed crime is carried out, giving them procedural rights and obligations. § We consider it necessary to note that the stage of verification of a crime report is quite young. Only in 2001 was it enshrined in the Code of Criminal Procedure of the Russian Federation. Since 1963, the Criminal Procedure Law provided the right to inspect the scene of the incident before initiating a criminal case. Until that time, the criminal procedure law, as such, did not provide for verification of a crime report. The competent authorities acted as follows: they accepted a statement about the crime, after which they made a decision on it within 24 hours.

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Some scholars advocate the abolition of the stage of verification of the message about the crime, saying that it is necessary to initiate a criminal case only on the basis of a pretext or reason for such. In this regard, we consider it necessary to consider the experience of foreign countries in considering a crime report.

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It should be noted that not all countries provide for such a stage in the framework of pre-trial proceedings. D.A. Varnavsky [3, p. 32] notes that "the current and reformed legislation of some in the past socialist countries of Europe, characterized, as you know, by a certain desire for more than 20 years to distance themselves from the previous canons of state administration, at the present time retained the stage of considering a report of a crime, which is inherent in the Criminal Procedure Code of the Czech Republic, Slovakia, Poland and the countries of the former Yugoslavia".

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Moreover, in the Criminal Procedure Code of Belarus, Armenia, Uzbekistan, this stage is also preserved. Meanwhile, in Ukraine, the stage of verifying the crime report was abolished, as was the entire stage of initiating a criminal case. Pre-trial proceedings begin with the registration of a statement of an offense or crime in the unified register of pre-trial investigations. Along with this, there is also recorded the preliminary qualification of the crime, data on its applicant, victim, and also assigned a number of criminal proceedings [4, p. 39]. §

In turn, A.F. Volynsky [5] says that “the Ukrainian Criminal Procedure Code demonstrates the will and desire of the legislator of this country, using the centuries-old experience of a number of Western European countries in the fight against market crime, to oppose modern crime to modern forms, methods and means of combating it”. § In countries of the continental and Anglo-Saxon systems of law, pre-trial proceedings begin with an inquiry by the police services. For example, a similar approach exists in Latin America, USA, Canada, Great Britain, Australia, New Zealand, and continental Europe. In these countries, after receiving a statement of a crime, the police begin to conduct an inquiry, the main purpose of which is to identify the person who committed the crime.

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L.V. Golovko [6] believes that in the world there are three systems for organizing criminal proceedings, conventionally called “French system”, “German system”, “American system”. Let's consider them in more detail. § The initial stage of the criminal process in France is a police inquiry, which is aimed at finding evidence, identifying the person who committed the crime. Such an inquiry is conducted under the direction of the prosecutor. Interestingly, this form of inquiry is not limited to timeframes, but, as a rule, is carried out within a few weeks. As part of the proceedings, the authorized persons have the right to carry out all the investigative actions necessary to obtain evidence of the person's guilt in committing a crime. If the person who committed the crime is clearly not identified, then an initial inquiry is carried out, which is essentially similar to the domestic verification of a crime report. The timing of this is also not set. It is curious that at this stage the police have the right to detain not only suspected persons of a crime, but even victims and witnesses. This is necessary “to provide them with information about the crime” [7].

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In Germany, there is also no stage of verification of the crime report, and the criminal proceedings themselves begin with a police inquiry [8]. It is worth noting that the prosecutor is in charge of all proceedings in the case, who, if a guilty person is found, issues an indictment and sends it to court.

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As aptly noted by D.A. Varnavskiy [3, p. 37] “one of the features of the German criminal procedure is the absence of strict normative regulation of the procedure for conducting an inquiry, as well as conducting search measures. A characteristic feature is the absence of a preliminary investigation. Identification, disclosure and investigation are entrusted to the police, which carry out their professional activities under the guidance and control of the prosecutor”.

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A feature of the US-UK model is the lack of clear rules for police investigation. For example, in the United States, in addition to federal legislation, it is worth considering state legislation, which is different in nature, therefore, pre-trial proceedings in different states will differ from each other. The police in the process of pre-trial proceedings have as its main purpose the search for the person who committed the crime. It is also interesting that at this stage the results obtained are not recorded in the protocol. Also, the American model is characterized by the absence of prosecutorial supervision over police activities. The list of investigative actions, the implementation of which is possible before the initiation of a criminal case, includes the control of technical means of communication and a search. Based on the results of the inquiry, the police draw up reports, pass them on to their leader, who checks them for legality, validity and sufficiency. Thus, the implementation of departmental control in the American model of criminal procedure in pre-trial proceedings is evident.

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The study of the criminal procedural legislation of Vietnam in this area has established two conceptual aspects. So in Vietnam, firstly, there are no principles of consistency and independence of the investigator already at the stage of checking the crime report, since he is directly subordinate to his head or deputy head of the investigative body; secondly, there is no mechanism for departmental control and prosecutorial supervision over activities at the stage of initiation of a criminal case, both by the investigative body in general and the investigator in particular, i.e. the activities of the investigative body cannot be verified before the court session or the presentation of their own claim by the victim from the illegal or unreasonable decision of such a body. In fact, the analysis of such features in the legislation of different countries is important both for improving the theory of criminal procedural science, and for identifying the optimal directions of interaction between the investigator and the prosecutor and the head of the investigative body at the stage of checking reports of crimes in law enforcement practice [9].

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According to the Criminal Procedure Code of Kazakhstan, the starting point for starting an investigation is the registration of a statement and a report of a crime, as well as the initial investigative actions preceding this [10]. § In turn, Z. K. Ayupova, A. M. Seralieva [11, p. 146] note that “the main task is to protect the rights of participants in the process and prevent corruption, since conducting inspections, searches, seizure of documents, seizure of correspondence, seizure of property, carrying out expert examinations, etc. are held in the absence of a determination of the procedural status of the participants in the process and without the obligatory involvement of lawyers and defenders. The suspects do not have the opportunity to file petitions, to get acquainted with the case materials.

Paradoxical as it may sound, but in practice, in practice, numerous materials of pre-investigation checks in terms of volume significantly exceed the volume of the criminal case itself. And this despite the fact that officially a criminal case against the suspects has not yet been initiated. In this case, procedural economy, manifested in the exclusion of pre-investigation verification, strengthens the procedural protection of the participants in the process by immediately giving status to the participants in the process with a guaranteed scope of rights and obligations”.

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According to the fair opinion of a number of Russian scientists (A. V. Popenkov, D. A. Ivanov, S. N. Khoryakov, L. N. Poselskaya), the right to defense belongs not only to the accused and the suspect, who are officially recognized in this procedural status, but and to any person against whom procedural actions are being carried out, including at the stage of initiation of a criminal case (the scene of the incident is inspected, forensic examinations are assigned, objects and documents are seized, etc.) [12].§

The issue of the status of the victim at the stage of verification of the crime report has not been resolved, in connection with which his rights are significantly violated at this stage of criminal proceedings, and the issue of compensation for harm caused by the crime is not fully resolved [9].

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Indeed, without analyzing foreign experience and then taking it into account in the existing model of domestic criminal procedure, it is impossible to present a correct picture of its development. A detailed examination of the foreign procedural foundations for checking a crime report will allow us to form the most suitable model for checking a crime report for our state, taking into account possible features.

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Having analyzed the aforementioned experience of foreign countries, and the positions of Russian scientists [13,14], we come to the conclusion that the stage of verification of the crime report is unconditionally necessary. But we also believe that it is impossible to continue to expand the list of investigative and procedural actions that can be carried out before the initiation of a criminal case, since this will entail the solution of related problematic issues, such as, for example, the determination of the procedural status of persons in respect of whom the check is carried out, respectively, the vesting their rights, duties and responsibilities, which, ultimately, will affect the effectiveness of the inspection, since it will be cumbersome, and then develop into a separate stage of the criminal process. It will also affect the already wide range of powers of the head of the investigative body and the prosecutor. Thus, the need for legislative changes to abolish certain investigative actions in the law, which can be carried out at the stage of verifying a crime report, is obvious.

4. Conclusions

An analysis of the consideration of international experience showed that many foreign states have a simplified, in comparison with the domestic, system for verifying a crime report. In most cases, at this stage, there is no departmental control and prosecutorial supervision. It seems that our state has its own path of development, therefore, it is not possible to implement similar norms. In Russia, at the stage of checking a crime report, the departmental control of the head of the investigative body is expressed in his authority to check the materials of the check. In particular, Paragraph 2 of Part 1 of Art. 39 of the Code of Criminal Procedure of the Russian Federation contains the following authority of the head of the investigative body: “To check the materials of the verification of the crime report or the materials of the criminal case, to cancel the illegal or unfounded decisions of the investigator”. We believe that it is precisely the control function necessary at the stage under consideration that is not sufficiently revealed here, since the head of the investigative body is obliged not only to check the legality and validity in general upon completion, but also in view of the fact that the circle of investigative actions is sufficiently expanded, already during their implementation, the head must implement its controlling function. It seems that in the end, this will have a positive effect on the timing of the audit.

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