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The initial stage of criminal proceedings under the legislation of the Russian Federation

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ABSTRACT-- *The article is devoted to the characterization of the procedure for initiation of criminal cases under the legislation of the Russian Federation. The sources of information about crimes that trigger appropriate response measures are investigated. A detailed coverage of the order of receipt of information about the crime, as well as the reflection of this information in the documentation of the law enforcement agency. Particular attention is paid to ensuring the rights and legitimate interests of victims of crimes, as well as those in respect of whom the issue of initiation of criminal case is being resolved.*

Key words-- *criminal proceeding, criminal case, investigator, prosecutor, court, individual rights, Crime Incident Report, accusation, aggrieved.*

Among the main findings obtained in this paper, the following points should be highlighted:

- *In the sphere of criminal procedure, the provisions of the Constitution of the Russian Federation and international regulatory legal acts should be fully ensured in terms of ensuring an effective response to each case of the crime committed.*
- *the task to respect the rights of persons, both victims of crimes, and those in respect of whom the issue of initiation of criminal case is being resolved, must be fully based on the achievements of modern criminally-remedial science;*
- *one can judge the state with protection of rights and legitimate interests in the Russian state as a whole by the fact how effective the activity of law enforcement agencies is in each case of detecting signs of a crime;*

I. INTRODUCTION

In accordance with Art. 2 of the Constitution of the Russian Federation, the highest value in Russia is a person, their rights and freedoms, and the state has the duty to recognize, respect and protect them.

Criminal proceedings constitute one of the most important areas of state activity, because the detection and bringing persons who have committed crimes to criminal responsibility, a fence from criminal prosecution of persons pure from any crimes ensures the stability of the state, society, and personality development.

In accordance with paragraph 56 of Art. 5 of the Russian Federation Code of Criminal Procedure , criminal procedure includes both trial and pre-trial procedure on criminal cases, and the pre-trial proceedings in accordance with paragraph 9 of the same article begins from the moment a crime report is received. Thus, the initiation of a criminal case is an integral part of a criminal procedure, and the rules laid down in art. 6 of the Russian Federation Code of Criminal Procedure determine the purpose of this activity.

According to this article, criminal procedure has, by its purpose, the protection of rights and legitimate interests of persons and organizations who have aggrieved from crimes, as well as the protection of the person against

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unlawful accusation, conviction, restriction of their rights and freedoms. Immediately, we note that the appointment of criminal proceedings is a dual category. It is considered to be achieved only in cases where both the person who aggrieved from the crime has exercised their right of defense by the state, and the truly guilty person whose rights are properly secured has been brought to criminal responsibility.

With regard to the activity to initiate a criminal case, the appointment of criminal procedure is implemented in a very specific way at this stage.

First of all, we note that paragraph 1 of Part 1 of Art. 6 of the Russian Federation Code of Criminal Procedure is about protecting the rights and legitimate interests not of an "aggrieved person" who appears as a procedural figure only after a criminal case is initiated, but "aggrieved persons and organizations", which should be understood as individuals and legal entities that were caused harm, regardless of the their official recognition to be aggrieved. This activity acquires particular relevance at the stage of initiating a criminal case, when it is necessary not only to establish the signs of a crime, but also to immediately begin law enforcement activities.

On the other hand, at this stage there are unacceptable situations where the rights and freedoms of persons in respect of whom the issue of initiation of criminal case is being resolved are illegally restricted (Section 2, Part 1, Art. 6 of the Russian Federation Code of Criminal Procedure). Moreover, such violations can occur both in cases where a criminal case is initiated against a specific person without sufficient grounds, and when criminal cases are opened on grounds of a crime, if person appears in audit materials with sufficient information actually collected about them as of one who committed the crime, but they are not granted with due-process rights, in particular the right to use the assistance of a lawyer.

In this regard, the relevance and significance of the study of problems arising at the stage of initiation of a criminal case cannot be overestimated. It is at this stage of criminal proceedings that specific criminal procedural relations arise and develop, the basis for further proof in a criminal case is laid. Violations of the law committed at the stage of initiation of a criminal case have serious negative consequences for the subsequent process and do not allow making a final decision on it that meets the requirements of legitimacy, justification, motivation and justice.

II. Methodology

This study methodically represents an analysis of Russian legislation in the field of criminal justice, as well as the practice of its application. Used methods: historical, legal, sociological, method of legal norms interpretation, a number of logical methods. Based on the data obtained, key conclusions were formulated that allowed a number of terms to be reasonably applied, establish the need for systemic improvement of Russian legislation by introducing mechanisms to ensure proper response from law enforcement agencies in each case of detecting signs of crime, as well as protecting the rights, freedoms and legitimate interests of the individual.

Below there are examples that characterize the activities at the initial stage of the Russian criminal procedure:

№ 1. Since at the stage of initiation of a criminal case, the issue that predetermines the further movement of materials is resolved, it is very relevant to study the actions and decisions that are being made (taken) at this stage in the Russian Federation.

Despite the fact that in the previous Code of Criminal Procedure of the RSFSR a very narrow list of procedural actions was fixed, in practice a thorough check was carried out on each received reason for initiation of a criminal case. For example, preliminary studies were carried out on subjects to be recognized as cold weapons; according to medical records and as a result of the examination, a medical certificate was drawn up by the doctor, which previously established the severity of the harm to health; by means of express analysis, it was established whether the detected substance was narcotic, etc . Despite the limited evidentiary value of the documents received (and on the forms of some of them it was even explicitly stated that they were not subject to inclusion in the materials of the criminal case if it was subsequently initiated), they had a certain informational value, because they allowed investigators to make more informed decisions. In addition, since the prosecutor and the court were empowered

to initiate criminal cases, they used not only criminal procedural possibilities, but also those powers that they exercised in the framework of other activities when making a decision.

Thus, the prosecutor initiated criminal cases on the basis of the prosecutor's checks results, if signs of a crime were established. The court had the right to initiate criminal cases while considering other cases, not only criminal ones, but also civil ones or cases of administrative violations. After making an appropriate decision, the materials were received by the preliminary investigation body for further procedure in a general manner.

№ 2. It is unacceptable practice that took place when, prior to the initiation of criminal cases, investigative actions were carried out with other, later dates recorded in the protocols despite direct legislative prohibition. Naturally, this largely ensured the adoption of the “correct” final decision, however, in any case, this activity was essentially a kind of falsification of the materials of the criminal case with the corresponding legal consequences.

№ 3. In accordance with the Russian Federation Code of Criminal Procedure, the content of information about a crime being committed or under preparation must be codified in one of the sources referred to as the reason for initiating a criminal case (part 1 of article 140 of the Russian Federation Code of Criminal Procedure). Consequently, the reasons for initiation of a criminal case and their substantive content are the main subject of this stage activity.

All the grounds embodied in the Russian Federation Code of Criminal Procedure are legally equivalent and should have identical legal consequences. Thus, a statement about a crime (Section 1, Part 1, Article 140, Article 141 of the Code) is considered a pretext for initiation of a criminal case, regardless of whether it was submitted verbally or in writing. It must meet stipulated requirements, as well as be authorized in both cases. An application can also be filed both by the person himself, in relation to whom the act was committed, and by any other person who has become aware of the crime committed or being prepared.

№ 4. As a rule, the Crime Incident Report is filed not to the investigator themselves but to the police control room of the relevant law enforcement agency. As the study of practice shows, law enforcement officers on duty receive and register allegations of crimes themselves, even in those cases when there was a duty investigator in the law enforcement office at that time. Therefore, as part of the verification of the incoming reason, the investigator should assess the content of the statement about the crime for compliance with the information presented in it. Thus, situations are possible when, at the moment of receiving the oral report of a crime, the official may change the information and derive it from the criminal law response sphere. In addition, it is not a secret that there are cases when a document processed as a written statement about a crime was actually written as dictation by the official who received it. Subsequently all this may significantly reduce the effectiveness of the investigator’s work on verifying this information.

№ 5. If the statement contains information that a crime has been committed against a person, the prosecution of whom is carried out in a private or private-public order, the investigator should additionally check two points.

First, who has handed in this application - a person themselves against whom the act has been committed or another person. According to the general principles, formalized in Part. 2-3 of Art. 20 of the Russian Federation Code of Criminal Procedure, only the victim or their legal representative has the right to hand in a statement about the crime commission. In this regard, the receipt of statements about these crimes (both oral and written) from other persons does not cause any legal consequences about which the applicant should be explained. They should also be clarified who exactly has the right to hand in a statement about the crime commission, the criminal prosecution of which is carried out in a private or private-public order. At the same time, the investigator must take into account the content of Part 4 of Art. 20 of the Russian Federation Code of Criminal Procedure according to which a criminal case can be initiated in the absence of a statement handed in by the victim or their legal representative if the crime has been committed against a person who, due to a dependent or helpless state or for other reasons, cannot defend their rights and legitimate interests. Therefore, this aspect should also be verified upon receipt of a statement from another person.

Secondly, it is required to find out what kind of complaints - criminal or other (civil, moral, etc.) the applicant has to the person who appears in the statement about the commission of the crime of a private or private-public

charge. The application must be received in all cases without exception but the applicant must be explained the consequences of handing in the statement, depending on its requirements.

However, in any case, a law enforcement officer does not have the right to refuse to accept a statement for a crime and send the applicant to another body. The statement is subject to acceptance, and then, depending on its content, it is processed in accordance with the jurisdiction, and in criminal cases of private prosecution - directly to the court.

№ 6. In force of Part 3 of Art. 145 of the Russian Federation Code of Criminal Procedure, the investigator, in cases when the received report on a crime is to be transferred in accordance with the jurisdiction or to the court, is obliged to take measures to preserve the traces of the crime. On its own terms, this provision is fully consistent with the purpose of criminal proceedings and is designed to ensure proper response to each case of a committed or imminent crime . However, this rule, due to its insufficiently precise fixation in the law, causes a number of inaccuracies and is not always effectively used in practice.

Therefore, it is not fully associated with the sequence of the execution of verification actions at the stage of initiating a criminal case. The duty of the investigator, other officials to take measures to preserve the traces of the crime is universal and does not depend on whether the materials will subsequently be sent to another competent authority. Although in practice the appropriate measures are taken, they, as shown by the results of the study of criminal cases, are not mandatory and unified. In the overwhelming majority of cases, such measures are not procedural but rather organizational in nature (communication by telephone and calling an investigation team from another body; organizing security of the scene; collecting information about possible eyewitnesses to the crime, etc.)

Therefore, the Russian Federation Code of Criminal Procedure should establish a more general rule that the official for each reported crime must respond appropriately to preserve the traces of the crime.

In addition, it is not quite clear how the preservation of the crime traces is carried out - whether it is the actual organizational actions (fencing of the scene of the accident, calling emergency and other services, etc.), or in this case it is also a question that the crime traces were documented. As the examination of the materials on which criminal cases were subsequently initiated shows, it is required that both components of this requirement are complied with for a proper investigation of the crime. Therefore, at the sub-legal level, it is necessary to fix a specific algorithm of the investigator actions and other law enforcement officials to preserve the traces of the crime, to fix them in the materials, as well as to establish other circumstances that are important both at the stage of initiating a criminal case and during subsequent investigation of crimes.

№ 7. Currently Article 144 of the Russian Federation Code of Criminal Procedure has been supplemented with new part 1.1, which among other things provides for the possibility of applying security measures at the stage of initiating a criminal case. Assessing this rule as undoubtedly positive, at the same time, we note that this provision should not be in conflict with the rule enshrined in Part 7 of Art. 141 of the Russian Federation Code of Criminal Procedure, according to which anonymous statements about a crime cannot be used as grounds for initiating criminal cases. Anonymity is the property of a statement when its author is unknown at all (the statement is not signed, signed unintelligibly, by a fictitious name, etc.) . If the information about the applicant was disguised due to the safety of the applicant but is known to the law enforcement authorities, then this statement should not be recognized as anonymous. In order to avoid confusion and competition of these norms, it is advisable not to consider the statement about the crime anonymous if the information about the applicant is known to the accepting authority or official but is not given in the text of the statement in order to ensure the safety of the applicant, their birth relatives, relatives or close persons.

If a statement about a crime is handed in on behalf of a legal entity that has been harmed, then in any case it is not anonymous, since it must contain official details (name of the legal entity, its address, etc.) and be signed by the manager . In addition, in cases where information about a crime has become known to a particular employee, they are entitled to file an application on their own behalf or inform the management about this fact and then act as a witness during the subsequent criminal proceedings.

No. 8. In the Russian Federation Code of Criminal Procedure, a voluntary surrender was fixed as an independent reason for initiating a criminal case, (Section 2, Part 1, Article 140, Article 142). By its legal nature, a voluntary surrender does not differ much from a statement about a crime. It is done both orally and in writing by the person who committed the crime on their own or in a group with other persons since in the Russian Federation Code of Criminal Procedure a voluntary surrender is indicated only as a pretext for initiating a criminal case. Cases where after initiating a criminal case a person informs about their involvement in the commission of a crime, contributes to exposing accomplices, voluntarily compensates for the caused harm, etc., do not relate to a voluntary surrender but are another manifestation of sincere acknowledgement and complete and voluntary abandonment of the criminal purpose. On the other hand, if a person reported a crime committed by them but not by appearance in person but by telephone or by other means of communication. The person should be given the opportunity to write a statement about the crime committed by them after taking appropriate response measures.

The difference between voluntary surrender from other reasons to initiate a criminal case is that the document in each case indicates the information about the applicant as the person who committed the crime. As S.V. Borodin explains, in verifying a voluntary surrender in any case, it must be established whether the act of a person contains signs of a crime, as well as the identity of the person who came forward and motives of surrender . At the same time, it should be added that all three specified components should be installed equally. In addition, if the motives of the surrender are not established, it does not diminish its importance as a pretext for initiating a criminal case, however, establishing the motives will allow later to resolve many other issues of the criminal case effectively - about the choice of a preventive measure, about the possibility of concluding a pre-trial agreement on cooperation etc.

No. 9. The Russian Federation Code of Criminal Procedure establishes such a pretext for initiating a criminal case as “a report on a crime committed or being prepared, obtained from other sources” (Section 3, Part 1, Article 140, Article 143). The peculiarity of this reason is that it is “open in nature”, i.e. essentially any information that is not included in the content of other reasons can be summed up under its form. In addition, the verification activity in this case begins even before this occasion has received its documentary expression. This information can be collected both as a result of operational and service activities of law enforcement agencies , and by the investigator themselves during the preliminary investigation of other criminal cases.

Conducting the correlation of the message on a crime received from other sources with other reasons, one should generally support the position of N.V. Zhogina and F.N. Fatkullina who believe that the way the applicants bring the crime information to the authorized bodies is not of fundamental importance. The reason, according to the authors, "... is there regardless of what this action is expressed in: an oral statement, the presentation of a written text of the statement or access through the means of communication (telephone, telegraph, etc.)." At the same time, taking into account modern legal realities, the reasons depending on the method of providing information still need to be differentiated. If there was a written or oral appeal, then the reason for initiating a criminal case is a statement about the crime or a confession, if the information was provided by means of communication, then the “report on the crime received from other sources” is used as the reason.

III. Conclusion

Summarizing the above and summing up the study, it is necessary to note the following.

Within the framework of this article, an attempt was made to carry out research on the initial stage of criminal proceedings in the Russian Federation, to identify both the advantages and disadvantages of this procedure. Comparing this activity with similar stages of criminal proceedings in the form in which they are used in many states, we can conclude that there is a separate stage in Russia where many issues concerning the further movement of the criminal case are resolved.

The value of this stage cannot be considered unambiguously positive or negative. Among the positives, it can be noted that before the beginning of the criminal prosecution, the investigator establishes the minimum amount of evidence that allows to decide whether to initiate a criminal prosecution and subsequently make more informed decisions on the criminal case. On the other hand, the existence of this stage greatly hinders access to justice for persons against whom acts have been committed that contain signs of crime.

The problems outlined in this article need to be resolved both at the legislative and at law enforcement levels. At the same time, one should use the positive experience of foreign countries in this sphere of public relations regulation.

REFERENCES

1. The Constitution of the Russian Federation of December 12, 1993 // Collected Acts of the Russian Federation. 2014. № 31. Art. 4398.
2. Russian Federation Code of Criminal Procedure of December 18, 2001 No. 174-FL // Collected Acts of the Russian Federation. 2001. No. 52 (Part 1). Art. 4921. Further - Russian Federation Code of Criminal Procedure, Code.
3. Borodin S.V. (1970) “The resolution of the issue of initiating a criminal case [Razreshenie voprosa o vozbuzhdenii ugolovnogo dela]”. M .: All-Union Scientific-Research Institute of the Ministry of Internal Affairs of the USSR, P. 32.
4. Zhogin N.V., Fatkullin F.N. (1961) “Initiating of criminal case [Vozbuzhdenie ugolovnogo dela]”. M .: Gosyurizdat, P. 94.
5. Ivanov D.A. (2007) “Protection by the investigator of the rights and legitimate interests of legal entities, victims of crimes [Zaschita sledovatelem prav I zakonnykh interesov yuridicheskikh lits, poterpevshikh ot prestupleniy]”. Author. diss. ... Cand. legal sciences. M., p. 14.
6. Criminalistics. Textbook / eds. A.G. Filippova. 2nd issue. – M., 2000. – p. 583.
7. Kovaleva M.G. (2007) “Some issues related to the initiation of a criminal case on the basis of the results of operational-search activity [Nekotorye voprosy, svyazannye s vozbuzhdeniem ugolovnogo dela na osnove resultatov operatsionno-poiskovoi deyatelnosti] // Proceedings of the international scientific-practical conference "Actual problems of criminal justice: questions of the theory of legislation, practice of application (on the 5th anniversary of the Code of Criminal Procedure of the Russian Federation)" M., p. 352-355.
8. Marcifin P.G. (1993) Ensuring the rights and legitimate interests of the individual at the stage of initiation of criminal proceedings [Obespechenie prav I zakonnykh interesov lichnosti v stadia vozbuzhdeniya ugolovnogo dela]. Author. diss. ... Cand. legal sciences. M., p. 7.
9. Rumyantsev M.O. (2009) “Statement of crime as a pretext for a criminal case [Zayavlenie o prestuplenii kak povod dlya vozbuzhdeniya ugolovnogo dela]” // Investigator. № 5. P. 25-30.

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