

Realization of human rights and freedoms when checking a crime report, taking into account digitalization

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Abstract. The reforms of the domestic criminal procedure legislation carried out in recent years in Russia are primarily aimed at improving the effectiveness of the implementation of the rights and freedoms of persons involved in the sphere of criminal proceedings, the beginning of which, according to the criminal procedure law, is conditioned by the receipt of a crime report by the competent authorities and activities to verify it. However, the analysis of the effectiveness of pre-trial proceedings conducted by the internal affairs bodies refers only to crimes, the analysis of data on the number of registered crime reports and the number of refusals to initiate criminal proceedings is not published by the official data of the Ministry of Internal Affairs of Russia. At the same time, one of the fundamental indicators of the activity of the internal affairs bodies is the increase in the number of unsolved criminal cases, which indirectly indicates an unwillingness to initiate criminal proceedings until, during the verification of a crime report, a person subject to further involvement as a suspect is identified after the decision to initiate a criminal case is made.

1 Introduction

The dynamics and the level of registered crimes, since 2016, annually show a steady decline or stable indicators. So, over the past 2 years – 1,890 thousand, which, of course, can be influenced by the decriminalization of a number of crimes carried out recently in Russia, however, the number of violations of the law detected by the prosecutor's office in pre-trial proceedings, including at the stage of initiation of criminal case, remains consistently high – 5,139 thousand for 2019.

In addition, if in 2019, according to the official statistical indicators of the Ministry of Internal Affairs of Russia, the number of initiated criminal cases amounted to 2,024.3 thousand, then the number of decisions taken by the prosecutor's office to cancel decisions on refusal to initiate criminal cases according to the official statistical indicators of the RF General Prosecutor's Office amounted to 2,035.9 thousand, i.e. exceeded the number of decisions taken on the initiation of criminal cases [16].

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According to the authors of works in the field of criminal procedure, as well as practitioners of investigative bodies, the verification of crime reports is usually carried out by local or operational police officers authorized by the head of the body of inquiry with the rights of an inquirer, such a check due to the fact that the official duties of these persons provide for a different scope of authority is very formal and is more aimed at registering messages with a law enforcement agency, obtaining explanations and transferring the material of the investigation in accordance with the jurisdiction, or making a decision by the body of inquiry to refuse to initiate a criminal case by the head of the body of inquiry [15].

2 Materials and methods

During the research, the main method used was the dialectical method of scientific cognition of objective reality.

Also, the methodological basis of the study was made up of such methods as historical and legal, used in the study of the development of the institution of initiation of criminal proceedings, and comparative legal method.

The empirical basis of the study is formed by official statistics data, interviewing and questioning materials of investigators and inquirers, the material of checks conducted on reports of a crime.

3 Literature review

Such scientists as Abzalbekova M., Arenova L., Zbinskaya Y., Sultanbekova G., Yessentaeva N. [1], Bekishev A.K., Kan A.G., Ibrayeva A., Dyussebaliyeva S.S., Ibrayev N.[2], Kharchenko T.Y., Voronina I.E.[3], Kupryashina E.A., Boev D.V., Gileva A.A., Lyakhova A.I., Shumilin S.F. [4], Medvedeva S.V., Popov A.M., Kopylova O.P., Burtseva E.V., Seleznev A.V. [5], Shumilin S.F., Kolmakov P.A., Nasonov A.A., Novikova E.A., Shumilina O.S. [6], Smirnov R.Yu., Malakhov M.A. [7], Zuev S.V., Baiguzhin P.A. [8], Alexandrova O.P. [9], Derishchev Yu.V.[13], and others considered the issues of the stage of initiation of criminal proceedings in their works.

A number of authors wonder how criminal proceedings should begin so that there is a possibility of fixing traces of a crime by the body of inquiry, but at the same time the materials were transferred immediately after collecting and fixing traces of a criminal act to the investigator, the inquirer to resolve the issue of further criminal prosecution.

As arguments for the above position, O.V. Logunov, S.P. Umnov, E.K. Kutuev cite the circumstances that the local or operational police officers are not participants in criminal proceedings and the activities to verify the report of a crime in the form in which it exists in the Criminal Procedure Code of the Russian Federation are currently not peculiar to them, and due to the large volume of possible investigative actions, the collection of evidence is currently being carried out already at the stage of initiation criminal case [15].

The authors note that to date, to assess the act from the point of view of its public danger, a person who has accepted a criminal case for his production has the right to carry out legal detention, i.e. all other subjects at this stage, performing the functions of an inquirer assigned to them, only perform official duties to identify and suppress socially dangerous acts.

The abolition of the stage of initiation of a criminal case, according to the authors mentioned above, should also be associated with a change in the reasons governing the initiation of criminal proceedings in general, the rejection of the stage of initiation of a criminal case should:

- increase the efficiency and effectiveness of the work of law enforcement officers on received reports of a possible crime;

enable law enforcement officers to carry out actual detention with the escort of a person to law enforcement agencies, about which a reasoned report would be drawn up and from the moment of which the period of detention would be calculated;

- avoiding the stage of initiation of a criminal case would allow separating the rights of the body of inquiry from other participants in the criminal process, such as the inquirer and the investigator;
- contribute to increasing the guarantee of the rights of all subjects and participants in criminal proceedings, since their criminal procedural status would be acquired at the time of registration of a report on a possible criminal act in a law enforcement agency;
- allow to increase the completeness and reliability of the information obtained during the verification of a crime report, since the decision will be made on further criminal prosecution after the suspect is identified, while the rights of the victim will be realized immediately after receiving information about the harm caused by a socially dangerous act;
- allow changing the approach to the occasion for criminal proceedings as an almost completely identified act, since currently existing statistical indicators that affect the assessment of the work of law enforcement agencies contribute to the concealment of identified crimes with an unidentified person.

4 Discussions

In our opinion, it should be left to the body of inquiry to identify and record traces of a socially dangerous act, to assist the investigator, the inquirer in obtaining the information necessary to assess this act. At the same time, the activities of the body of inquiry would be formalized by a report, and in the case of the use of coercive measures against persons, they would acquire the appropriate procedural status of a suspect or victim. For an investigator, an inquirer, the report of an employee of the body of inquiry or the decision of the prosecutor would be a reason for initiating criminal prosecution. The information collected by the body of inquiry in the performance of their duties to identify signs of a crime could be used as evidence, taking into account their admissibility and reliability [15].

However, in our opinion, such a bold decision to abolish the stage of initiation of a criminal case at the present time may significantly affect the realization of the rights and freedoms of persons involved in criminal proceedings, since the current Criminal Procedure Code of the Russian Federation to a greater extent ensures the use of any coercive measures against persons only after the initiation of a criminal case.

Some authors believe that the very decision on the initiation of a criminal case as one of the final decisions at this stage is foreign to the activity of verifying the report of a crime and slows down the process of cognition and investigation of the committed act. As arguments for this position, the authors cite the following: in practice, when searching for traces of a crime in hot pursuit, it is often necessary to execute a search or seizure from residential premises, the assessment of their legality or illegality by the court is related to the existence of grounds for that, and the decision to initiate a criminal case does not fit into these grounds and, moreover, thus, it looks foreign, delaying the decision on the need to use coercive measures. As a result, the authors come to the conclusion that the use of coercive measures in itself is the initiation of a criminal case [11].

A.Yu. Tsvetkov, on the contrary, notes that the problems in carrying out activities to verify crime reports are more managerial in nature than legal [21].

However, it is difficult to agree with this, since, in our opinion, the position of the legislator regarding the expansion of the range of investigative actions and the grounds for extending the period of verification of a crime report determines the existence in practice of managerial decisions and the organization of this activity by authorized entities in such a way that, in fact, at the stage of initiation of a criminal case, no search is made for a sign or signs

of a crime, and the collection of evidence on a future criminal case, on the basis of which a management decision is made on the expediency or in expediency of initiating a criminal case.

Thus, the problems of organizing and conducting verification of a crime report are in the legal field, and the absence in the Criminal Procedure Code of the Russian Federation of the concept of "grounds necessary for making a decision to initiate a criminal case" makes it difficult for their timely assessment by authorized entities.

V.M. Zyablina, on the contrary, notes that an increase in the burden on investigators and inquirers due to the cancellation of preliminary verification of a crime report will entail a decrease in the quality of criminal proceedings.

Agreeing with the opinion of V.M. Zyablina regarding the need to preserve the stage of initiation of a criminal case, we believe that at present it needs to be reformed in the field of reducing investigative and procedural actions carried out on it, which will speed up the resolution of the main issue – the initiation of a criminal case or refusal to initiate it, and will entail the collection of evidence and their preliminary assessment for the future criminal case.

On the contrary, the extension of the rights of the subjects participating at this stage, such as the applicant, the person who has been harmed by a possible criminal act, as well as the person against whom the report of the crime is being checked, needs to be expanded in order to guarantee respect for rights and freedoms at the stage of initiation of a criminal case.

The need for radical reform of the stage of initiation of a criminal case is indicated by such authors as O.I. Andreeva [10], V. Isaenko, E. Papyshcheva [14], E.M. Golovashchuk [12]. They indicate that point-by-point changes in the criminal procedure law will not solve the problems, in addition, these researchers suggest changing the managerial approach to the situation related to statistical indicators of registered reports of a crime and initiated criminal cases. Thus, the authors rightly point out that, for example, the reduction or increase in thefts may be related not to the work of law enforcement agencies, but to the general economic situation in the country or regional economic problems, the closure of a large enterprise, etc.

At the same time, the legislator in Part 2 of Article 20 of the Criminal Procedure Code of the Russian Federation refers to the person against whom the crime was committed as a "victim", which contradicts Article 42 of the Criminal Procedure Code of the Russian Federation, since the subject acquires the status of a victim in criminal proceedings only after the decision is made to recognize him as such and after the decision to initiate criminal proceedings, and Part 4 of Article 20 The Criminal Procedure Code of the Russian Federation already refers to this subject not as a "victim", but as a "person".

It seems that in Article 20 of the Criminal Procedure Code of the Russian Federation it is more appropriate for the legislator to refer to the specified subject in Article 20 of the Criminal Procedure Code of the Russian Federation as "a person in respect of whom elements of a crime are seen".

Criminal cases of public prosecution are initiated on the basis of all the reasons provided for in Article 140 of the Criminal Procedure Code of the Russian Federation, the person against whom this criminal act was committed does not need to be established before making a decision to initiate a criminal case.

In addition to the reference in Article 20 of the Criminal Procedure Code of the Russian Federation to a person who has been harmed by a possible criminal act as a victim, the authors note that the norm fixed in Article 91 of the Criminal Procedure Code of the Russian Federation makes it possible to refer a person actually detained at the place of commission of a criminal act to a suspect.

Thus, Article 91 of the Criminal Procedure Code of the Russian Federation establishes that a person can be detained if he is caught at the moment of committing a crime or immediately after its commission, in which case we are not talking about a criminal case,

since it was at the moment when the person was caught at the scene of the incident that it became known about a criminal act.

Thus, the criminal procedure law essentially refers such a person detained at the time of the commission of a crime or immediately after its commission to a suspect as a participant in criminal proceedings.

Some authors note that the detention of a person on suspicion of committing a crime without preliminary verification of a crime report contradicts current legislation and the institution of detention as a whole, since it is possible only in an initiated criminal case, and the activities following the arrest of a suspect to expose him are called criminal prosecution and cannot be carried out before the initiation of a criminal case [17].

However, it is not possible to avoid restricting the rights of persons, especially the person against whom the report of a crime is being checked, as indicated by the Constitutional Court of the Russian Federation also in relation to the previously existing Criminal Procedure Code of the RSFSR of 1960, so in its decision of the Constitutional Court of the Russian Federation of June 27, 2000 No. 11-P "On the case on checking the constitutionality of the provisions of Part 1 of Article 47 and Part 2 of Article 51 of the Criminal Procedure Code of the RSFSR in connection with the complaint of a citizen V.I. Maslova" [18] pointed out that Part 2 of Article 48 of the Constitution of the Russian Federation, when determining the position of a person in need of legal assistance, in connection with the restriction of his rights and freedoms, binds the right to use the free assistance of a defender from the moment of the actual restriction of his rights [13], i.e. from the moment the person was caught at the time of the crime before the initiation of a criminal case and deprived of the right to free movement.

The need to provide a defender at the stage of initiating a criminal case at the time of the actual detention of a person is indirectly indicated by the provision of paragraph 3 of Part 3 of Article 49 of the Criminal Procedure Code, indicating actual detention, but Part 3 of Article 49 of the Criminal Procedure Code establishes this possibility only in a criminal case. However, as we noted earlier, as a rule, the actual detention of a person at the time or immediately after the commission of a crime presupposes the absence of a criminal case on this fact.

The possibility of a person having the status of a suspect in criminal proceedings before the initiation of a criminal case is also indicated by the practice of the Republic of Belarus, while, as some authors note, such practice will allow to resolve many other problematic legal aspects when checking a crime report, including allowing for an examination before making a decision on the initiation of a criminal case [9].

However, the analysis of the effectiveness of pre-trial proceedings by the internal affairs bodies refers only to crimes, the analysis of data on the number of registered reports of crimes and the number of refusals to initiate criminal proceedings by the official data of the Ministry of Internal Affairs of Russia is not tracked as an effective indicator of their activities. At the same time, one of the fundamental indicators of the activity of the internal affairs bodies is the increase in the number of unsolved criminal cases, which indirectly indicates the unwillingness of the authorized subjects to initiate criminal proceedings until a suspect is identified during the verification of a crime report, against whom it will be possible to carry out criminal prosecution.

It is also worth noting that the dynamics and level of registered crimes, since 2016, annually show a steady decline or stable indicators, for the last 2 years these indicators have been established at the level of 2 million, which, of course, can be influenced by the decriminalization of a number of crimes carried out recently in Russia, however, the number of violations of the law detected by the prosecutor's office in pre-trial proceedings, including at the stage of initiation of a criminal case, remains consistently high - 5,139 thousand.

In addition, if in 2019, according to the official statistical indicators of the Ministry of Internal Affairs of Russia, the number of criminal cases initiated amounted to 2,024.3

thousand, then the number of decisions taken by the Prosecutor's office to cancel decisions on refusal to initiate criminal cases according to the official statistical indicators of the RF General Prosecutor's Office amounted to 2,035.9 thousand, i.e. exceeded the number of decisions taken on the initiation of criminal cases.

Taking into account the fact that mainly the verification of crime reports is carried out by local or operational police officers authorized by the head of the body of inquiry with the rights of an inquirer, the authors argue that such verification, as a rule, is of a very formal nature and is more aimed at registering reports with a law enforcement agency, obtaining explanations and transferring the material of the investigation in accordance with the jurisdiction or issuing a decision by the inquiry authority to refuse to initiate a criminal case.

By its very nature, the verification of a crime report should be aimed at finding grounds to believe that a criminal act has taken place and fixing the existing traces of a crime, which should be aimed at reforming the criminal procedure legislation at the present time.

In practice, the receipt of a reason for the initiation of a criminal case is made out by registering it in the crime report log. When a person submits an application, he is given a notification coupon with a registration number and the date of acceptance of the application from him.

However, the procedure for registering the receipt of a reason for initiating a criminal case is not established by the Criminal Procedure Law. This activity is regulated by an interdepartmental legal act – the order "On Unified Accounting of Crimes", approved on December 29, 2005 [19] (hereinafter – the Order on Unified Accounting).

The Unified Accounting Order obliges an authorized official or designated person to immediately register this message about a possible criminal act committed.

An authorized and designated person differs in that investigators and inquirers are authorized to receive crime reports, and a designated person may be an inquiry body for receiving a crime report, such officials include, for example, assistant officers.

Authorizing a person with the right to receive a crime report on the basis of part 27 of the unified accounting order may be carried out by issuing an organizational and administrative document, i.e. an order, by the head of the body of inquiry. At the same time, the Criminal Procedure Code of the Russian Federation does not provide for such an obligation for the relevant participants in criminal proceedings, i.e. there is no procedure and form of such registration in the criminal procedure law.

The Order on Unified Accounting establishes the obligation to reflect the brief information contained in the crime report by assigning a registration number when entering information into the crime report log. When transmitting a report on a crime under investigation, its re-registration is not allowed.

Also, this order establishes the concept of a crime report hidden from registration and responsibility for such actions, but such responsibility is possible only in the form of disciplinary, since federal legislation does not provide for any other type of responsibility.

Practitioners note that when checking a report of a crime, documents and items are obtained during an inspection, in the case of an inspection in a residential building, it is carried out with the consent of the owner of the premises or persons living in it.

If it is necessary to withdraw a video recording, for example, from video surveillance cameras, in practice it is either withdrawn during the inspection of the scene of the incident or by the body of inquiry during operational search activities on the basis of an order, with subsequent transfer to the investigator, the inquirer.

In our opinion, the proposal of individual authors on the seizure of objects and documents, other things, as well as electronic media, photo and video materials when checking a crime report by analogy with the Administrative Code of the Russian Federation is of interest [18].

So, during a pre-investigation check, when objects, documents, photos, videotapes, other things, as well as electronic media are seized from persons, in the presence of disinterested

persons, or if it is impossible for them to participate at night or in a remote area, during videotaping, an authorized official draws up a protocol on the seizure of these items, which is signed by the person from whom the seizure was made, as well as by disinterested persons, in case of refusal to sign by a person from whom the objects and documents and other things, as well as electronic media, photo and video materials are withdrawn, a corresponding entry is made in the protocol by the official who compiled it, which is certified by disinterested persons or by a video recording conducted during the seizure. A copy of the protocol is handed over to the person from whom the items were seized or to his legal representative. When carrying out a seizure in a dwelling, it is carried out with the consent of the owner of the premises or the persons living in it.

The absence of a real possibility of conducting an examination before the initiation of a criminal case significantly affects the establishment of signs of a criminal act provided for in Article 264.1 of the Criminal Code of the Russian Federation.

If there are signs of intoxication and when establishing information that a person was previously brought to administrative liability for similar actions, law enforcement officers are forced to replace actions aimed at establishing signs of the elements of the crime with actions provided for by the Administrative Code of the Russian Federation, and then transfer administrative examination materials at the request of an investigator or inquirer.

5 Conclusions

As a result of the conducted research of the problems arising at the stage of initiation of a criminal case in criminal proceedings, it should be noted the conclusions and proposals aimed at improving the effectiveness of activities to verify the report of a crime, the legal status of the subjects involved in this verification. Activities aimed at resolving reports of crimes have similar features to the stage of execution of a sentence, both of these specific stages have features that allow them to be classified as such, such as their own range of tasks, the presence of a special subject of proof (or circumstances to be established), a strictly defined circle of subjects, types of procedural documents drawn up at these stages, the timing of activities at these stages and strictly defined in the criminal procedure law, the moments of their beginning and ending.

The procedure for verifying a crime report and registering a crime report is not regulated by the criminal procedure law, the actions of authorized or designated officials are provided only in the interdepartmental order approving the unified regulations.

The procedure for summoning persons to give explanations, their responsibility for refusing to appear to the investigator, the inquirer without valid reasons, as well as the procedural form of explanation is absent in the Code of Criminal Procedure of the Russian Federation, which causes a delay in the period of conducting a pre-investigation check, and also entails the possibility of recognizing the received explanation from the person as inadmissible evidence, in the event of a criminal case.

The absence in the Code of Criminal Procedure of the Russian Federation of the procedure for the reclamation and seizure of objects and documents creates difficulties in law enforcement activities when checking a crime report, since the procedure, the procedural form of such seizure, the actions of the investigator, the inquirer when a person refuses to give out such objects and documents are not provided, as well as the procedure for attracting a specialist to participate in this procedural action is not provided. In addition, Article 168 of the Criminal Procedure Code of the Russian Federation regulates the involvement of a specialist only for conducting investigative actions, and Part 4 of Article 58 of the Criminal Procedure Code of the Russian Federation provides for the duties of a specialist to appear at

investigative actions and not disclose their results only at the stage of preliminary investigation.

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