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System weakness of the criminal procedure legislation in modern Russia

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Abstract

The research objective is to identify problems in the legal coverage of criminal justice in the Russian Federation. The author uses the term "criminal procedure". The necessity of complex changes in the existing criminal procedure legislation with a view to creating a single mechanism for criminal prosecution and protection is described. Among the main conclusions, we want to single out following point: A clear legal status of people involved in criminal proceedings, provided by the law and the mechanism for its implementation. It propels criminal procedure relations to new heights that positively affect the reputation of the social state.

Key words: criminal, proceedings, preliminary investigation, trial.

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Debilidad del sistema de la legislación procesal penal en la Rusia moderna

Resumen

El objetivo de la investigación es identificar problemas en la cobertura legal de la justicia penal en la Federación Rusa. El autor usa el término "procedimiento criminal". Se describe la necesidad de cambios complejos en la legislación vigente sobre procedimientos penales con miras a crear un mecanismo único para el enjuiciamiento y protección penal. Entre las principales conclusiones, queremos destacar el siguiente punto: Un estado legal claro de las personas involucradas en procedimientos penales, previstos por la ley y el mecanismo para su implementación. Impulsa las relaciones del procedimiento penal a nuevas alturas que afectan positivamente a la reputación del estado social.

Palabras clave: criminal, procedimientos, investigación preliminar, juicio.

1. INTRODUCTION

Modern Russian legislation (that regulates criminal proceedings) was adopted in 2001. Many international standards were realized in the Criminal Procedure Code of Russian Federation. In this regard, we should recognize the significance of the Criminal Procedure Code of the Russian Federation as a law designed to implement the most important human rights mechanisms that would ensure the rights of those, who suffered from committing crimes against them. The priority of a person’s interests over the state’s interests is clearly

expressed in the category "the appointment of criminal proceedings". The Code of Criminal Procedure of the Russian Federation was created in a rather complicated socio-political situation. That caused a number of systemic problems (currently counted in thousands) in its structure and content. First of all, the previous criminal procedure legislation prevailed over the group of developers that had been working with some changes for several decades already. In previous criminal procedure laws, the person's rights have not been given a significant place. Moreover, the rights have largely remained declarative, and its implementation depended on the will of officials. Therefore, the fixed procedure in the new criminal procedure law was compared to the previous procedure and did not have a mechanism for its implementation. As a result, the law enforcer "went the path of least resistance ", and applied the cancelled, but a habitual law to him. Moreover, there were a lot of cases, when the legislation was adopted based on monarchical rules. For example, in 1864 there was a drafting of a significant number of documents repeating the same circumstances, many official appeals to each other of prosecutorial agents. At the same time, the formation of the modern Russian legislation was not taken into account, and new legal relations arose, new means of accumulating and transmitting evidentiary information appeared. Many years ago, the Russian criminal trial remained documentary, officials spend a lot of time on drafting procedural documents and other documents, as well as on their turnover within the investigative and judicial bodies.

Also, the formation of the criminal procedural legislation of modern Russia was significantly influenced by the ratification of international legal documents. For example, the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4th, 1950. The ratification started the process of bringing Russian legislation to significant reforms of the criminal justice system. At the same time, the rules were based on civilized countries with centuries-old history of ensuring the rights, freedoms and legal interests of the people. We also should note that with the direct implementation of certain procedures in the Russian criminal process, we should take into account the fact that the majority of countries with a stable model of criminal justice, refer to the Anglo-Saxon (precedent) legal tradition, while Russia (both in the past and in the present) operates within the framework of a continental (codified) legal family. Undoubtedly, both forms and methods of criminal procedure legislation and law enforcement have their advantages and disadvantages; however, its "cross-usage" creates additional difficulties both in the legal theory and in law enforcement practice. It was adopted in a very fast way and caused significant complaints. Despite the fact that the discussion of the draft Code of Criminal Procedure was formally held for several years, the discussions were either theoretical or, on the contrary, concerned the individual. At the time of discussion, the membership of the working group was almost completely updated and caused additional difficulties. More than that, many aspects of the technical and legal nature were not taken into consideration directly during the adoption of the Code. This led to a discrepancy between many criminal

procedural norms and the lack of clearly prescribed law enforcement and law enforcement mechanisms. During the following years, a significant number of changes were made to the Russian criminal procedure legislation, especially aimed at ensuring the rights, freedoms and legitimate interests of persons involved in criminal proceedings. Nowadays, the Criminal Procedure Code contains significant problems that cannot be eliminated without assessing the place and role of the procedures in the common mechanism of Russian criminal justice. We will get a view of some examples in this article.

2. METHODOLOGY

This research is an analysis of foreign legislation, normative legal acts of the international level, as well as the practice of applying Russian legislation in the field of criminal justice. The following methods are used: comparative-legal, historical-legal, sociological, method of interpretation of legal norms, a number of logical methods. Important conclusions were formulated based on the obtained data, that made it possible to apply a number of terms, to establish a systematic improvement of Russian legislation by introducing mechanisms ensuring the rights, freedoms and legitimate interests of the individual.

Examples

No. 1. It is well-known that criminal proceedings are activities of authorized state bodies and officials strictly regulated by law. When creating the Code of Criminal Procedure of the Russian Federation, it underwent a preliminary examination in the Council of Europe, first of all, on its compliance with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. Among other comments, experts pointed out that the draft of this act contains an excessive number of norms of legal relations between the parties involved in the process, which represent the prosecution. As a consequence, it seems that the whole Code of Criminal Procedure of the Russian Federation will have a prosecutorial bias. The legislator removed articles devoted to the excessive detailing of legal relations from the Code, for example, between the investigator and the head of the investigative body, the investigator and the prosecutor, etc. Initially, it was assumed that these relations will be fixed at the subordinate level, in normative legal acts of a departmental and interdepartmental nature (Krasilnikov, 2013). However, in part 1 of Art. 1 of the Criminal Procedure Code, it was fixed that the procedure for criminal proceedings in the territory of Russia is established exclusively by this Code, based on the Constitution of the Russian Federation. Thus, many rules were removed from the Code, moved to a subordinate level, but simultaneously prohibited its usage.

In 2007, there was an attempt to solve this problem by disclosing a number of legal relations in articles on criminal proceedings on the part of the prosecution. At the same time, the problem was not completely eliminated. Very important issues remained, for example, the relationship between the investigator and the prosecutor. The study of law enforcement practice made it possible to establish that in different territorial bodies the preliminary investigation depends on the prosecutor in various ways. Including the degree of influence of the prosecutor on the investigator when taking any procedural decisions, approval of the final documents of the preliminary investigation, etc., even if the authority of the prosecutor in relation to the investigator in the law is not directly spelled out. A similar situation is observed in cases when there is an interaction between the investigator and the head of the investigative body, since the investigator actually performs not only the written instructions of the head of the investigative body, but also his oral instructions, which have no procedural expression.

To avoid such situations, it seems expedient to enforce the possibility of using regulatory legal acts directly in the RF Code of Criminal Procedure if it does not contradict the current legislation and if it does not affect the rights, freedoms and legitimate interests of those involved in the process. This will expand the scope of by-laws and, at the same time, unify the order of relations between bodies and officials representing the prosecution. No. 2. Criminal justice, like other types of socially significant activities, has its own assigned role

in the law (Smirnov, 2016). In Art. 6 of the Criminal Procedure Code of the Russian Federation stated that an appointment specifies protection of the rights and legal persons and organizations that have suffered from crimes as well as protection of the person from unlawful and unreasonable accusation, conviction, restriction of her rights and freedoms. At the same time, the fact that the category of appointment covers only the achievement of certain narrow tasks related to the production of a particular criminal case immediately attracts attention. At the general social level, the category "appointment of criminal proceedings" does not manifest itself in any way. Such provision does not impair the activities of criminal justice bodies and officials in specific criminal cases. However, it substantially reduces the general level of the importance of criminal proceedings in the state mechanism and does not reflect the actual role of this activity in regulating public relations. In order to avoid this situation, it seems advisable to introduce a new part in art. 6 of the Criminal Procedure Code of the Russian Federation. There can be stated the reflection of the social significance of the relevant activity, as well as the place and role of criminal proceedings in the state mechanism.

No. 3. In the Russian criminal procedural doctrine, a significant place is given to the principles of criminal justice (Khimicheva and Khimicheva, 2014).

Chapter 2 outlines the content of the principles. Art. 15 of the Criminal Procedure Code of the Russian Federation contains a

description of the principle of the adversarial nature of the parties, according to which the functions of prosecution, defense and resolution of criminal cases are separated from one another and cannot be assigned to the same body or the same official. In future, the participants in criminal proceedings will be divided into the appropriate groups, the special role of the court at different stages will be highlighted and a content of the rights and duties of various subjects of criminal procedure relations will be disclosed. Art. 16 of the Criminal Procedure Code defines the principle of ensuring the suspect and the accused with the right to defense, according to which the person has the right to defend himself, either personally or with the help of a lawyer, and the scope of the person's possibilities does not depend on how he defends his position. Other articles describe the rights of the suspect, the prosecutor and lawyer, as well as the duty of bodies and officials representing the prosecution to ensure these rights.

The principles are normative prescriptions that regulate the most important issues of criminal justice. It has generality and content of all other criminal procedural norms and mechanisms. At the same time, an essential systemic problem was that there is no common definition of the content of principles. This seriously reduces the level of demand for these rules, and also leads to an underestimation of their importance in resolving specific law enforcement situations.

The only way out of this situation is the introduction of a new article in Chapter 2 of the Criminal Procedure Code of the Russian

Federation, which should formulate the concept of criminal justice, taking into account their normative nature and deep penetration into all other legal norms and generated by these norms of legal relationship. For example, it can be pointed out that the principles of criminal justice are normative prescriptions of the highest legal force that regulate the most important issues of criminal proceedings, affect the content of other criminal procedural norms and mechanisms, are manifested in all stages of criminal proceedings and are protected from violations through a wide spectrum measures of state coercion.

No. 4. In the Criminal Procedure Code of the Russian Federation, a significant number of articles are given to the list of rights and duties that are included in the status of a participant. So, in part 2 of Art. 40 there are 23 points on the procedural rights of the victim. A similar number of points are found in the lists of rights of other persons involved in the process (Bykov, 2015). However, the study of the rights allows us to conclude that it is identical to the rights of other persons involved in the process (the right to file petitions, challenges, present evidence, get acquainted with the protocols of investigative actions in which they took part, etc.). Therefore, from the position of the adversarial principle, it would be more accurate to reflect the rights common to the parties to the charge and defense in the law, and then to allocate such rights that actually refer the participant to one or other of the parties. As a positive example, the content of art. 244 of the Criminal Procedure Code of the Russian Federation, which sets out the rights that are common to participants

on both sides (the right to petitions and petitions, the presentation of evidence, participation in their investigation, speech in court debates, etc.).

No. 5. Cognition in the field of criminal justice is carried out by way of proof. Any act is an event that happened in the past. Therefore, in order to establish its circumstances, it is required that in a special way, by individual constituents, a general picture of the deed is recreated, and other data that are relevant to ensure that a legitimate, justified and fair decision was rendered.

A well-established tradition of Russian criminal justice is the careful documentation of its progress and results. The modern criminal process of different countries is characterized by the fact that the information in the result of operational-search, rather than criminal-procedural activities is widely used (Dolya, 2009).

As for the Russian legislation, this possibility is reflected in only one article. Art. 89 of the Criminal Procedure Code states that in the process of proof it is prohibited to use the results of operative investigation activities if it does not meet the requirements imposed on them by the Code. In other words, it is required that the results of the operational-search activity duplicated in criminal procedural ways, and only in this case it becomes evidence in criminal cases.

According to the experience of different countries (for example, the Republic of Kazakhstan) in its legislation, operational-search activities are placed directly in the text of the law in the form of secret investigative actions, and their results, along with other evidence, are fully used in the course of proving (Semensov, 2015). Differences between such ways of gathering evidence are few (Sheifer, 2015). But the priority of investigative actions lies in the fact that in its rights and lawful interests of the people are much more secured. So, the inclusion in the Criminal Procedure Code of the full list of tacit investigative actions and the detailed regulation of the procedure for their production will ensure not only the expansion of the prosecution's capabilities, but also the greater scope of the rights of those involved in the process.

No.6. In the pre-trial proceedings of the Russian Federation, one of the main stages is the initiating a criminal case. Extensive activities are carried out at this stage, initial information on the crime is received and its verification is carried out. Verification actions are carried out in three groups of ways: 1) procedural verification actions; 2) a number of investigative actions (inspection, forensic examination, etc.); 3) operational-search activities. Nevertheless, in recent years there has been a tendency to expand opportunities for proving at this stage. On the other hand, there are suggestions in the scientific literature to liquidate this stage, and a preliminary investigation should begin immediately after the receipt and registration of a crime report (Makhov, 2014).

In this case, there will be no need to produce a whole series of verification measures, which should be duplicated by the manufacture of investigative actions. There is a sense in this suggestion, but based on the specifics of the Russian model of criminal justice, the main emphasis, in any case, should be done when a criminal prosecution begins against a particular person. Therefore, it is possible to propose a model in which a preliminary investigation will begin immediately after the registration of a crime report. If the criminal investigation is not found in the course of a subsequent preliminary investigation or trial, then it ceases and the person acquires the right to rehabilitation (chapter 18 of the Code of Criminal Procedure of the Russian Federation).

No.7. At the present time in the criminal proceedings are expanding conciliation proceedings, in which further progress and results largely depend on the will of the parties (Kachalova, 2016).

For example, a special procedure for a trial can be possible with the consent of the accused with the charge brought against him, a pre-trial cooperation agreement, the production of an inquiry (a type of the preliminary investigation is the authors' note) in abbreviated form. In addition, it is possible to terminate the criminal case by applying a fine as a measure of a criminal-legal nature.

However, inaccuracies of a systemic nature led to the presence of some problems in these procedures.

The pre-trial cooperation agreement is concluded between the suspect (accused) and the investigator, and then approved by the prosecutor (Bagautdinov and Nafikov, 2015). Before the end of the preliminary investigation, the prosecutor, with the confirmation of the indictment, also checks whether the conditions of the pre-trial agreement have been met. If it does, he submits an idea about it and sends the relevant documents together with the materials of the criminal case to the court. The disadvantage is that the law does not provide the investigator's ability to ascertain the full achievement of the cooperation results, stated in the agreement and to stop the criminal case, without sending it to the prosecutor, and subsequently to the court. Thus, when concluding a pre-trial cooperation agreement with the investigator, the suspect (accused) is simultaneously deprived of the right to criminal prosecution against him, for example, due to active repentance (Article 28 of the Code of Criminal Procedure of the Russian Federation). In this regard, it is necessary to create more flexible procedures, which provides that, the results of a pre-trial cooperation agreement, a criminal case against a person may be not only sent to court, but also terminated.

According to the possibility of applying a judicial fine, in the Art. 25.1 of the Criminal Procedure Code of the Russian Federation, the measure is applied only by the court, including cases when the issue arises in the course of pre-trial proceedings. Further, in chapter 51.1 of the Code, the procedure of a criminal-legal nature in the release of a person from criminal responsibility. People involved in the

process are fully covered by all the guarantees provided for by the criminal procedure law, including those concerning the possibility of termination with respect to a suspect, accused criminal case or criminal prosecution in the presence of appropriate grounds (both rehabilitating and not causing rehabilitation). At the same time, in the Art. 446.2 of the Criminal Procedure Code of the Russian Federation, this procedure excludes the possibility of taking decisions on termination of a criminal case (criminal prosecution) on a suspect, the accused person for other reasons (for example, in connection with the reconciliation of the parties). It is a very strict procedure of levying a judicial fine. Art. 446.5 of the Code specifies that a court can annul the earlier ruling on termination of the criminal case if a person failed to pay a designated judicial penalty. And, finally, a very significant problem is that, in accordance with Part 2 of Art. 27 and Art. 133 of the Criminal Procedure Code of the Russian Federation, the termination of a criminal case or criminal prosecution on the grounds provided for in Article 25.1 of the Code does not cause rehabilitation of the person. On the one hand, this is correct, because the deed took place; the person agreed that it had committed it. But, on the other hand, the main task set before the legislator in connection with the introduction of this procedure was not resolved, since the termination of a criminal case on any non-rehabilitant basis, along with the criminal record, is also reflected in criminal records, as a result of which individuals are further subjected to a number of restrictions in the choice of the sphere of labor activity. Thus, the declared decriminalization of these acts did not happen, and an important goal for the improvement of society

cannot be considered fully achieved. The way out of this situation is to add to Art. 14 "The Concept of Crime" of the Criminal Code of the Russian Federation a new part 3, which provides for the decriminalization of acts for which a judicial fine was paid and transferring them to the category of administrative offenses with the complete removal of information from those accounts, which fix the conviction of a person or the termination of a criminal case against him on non-rehabilitating grounds.

No.8. During the trial, there are also a number of problems caused by systemic mistakes made during the adoption of the Criminal Procedure Code. Thus, according to Art. 273, the investigation begins with the fact that the public prosecutor sets out the charge that was brought against the defendant, and then the presiding judge finds out whether the accusation is clear to him, whether he pleads guilty and whether he or his defender wishes to express his attitude towards the charged charge (Vasyaev, 2010). It should be noted that although this all happens in a formal setting, the very fact that it is the presiding judge who asks the question whether the defendant recognizes himself guilty is already an actual act aimed at exposing this person in committing a crime. Thus, it is not the law that is assigned to the law by the inherent function of criminal prosecution, which violates the fundamental rule on the impartiality of criminal justice. In this case, more in line with the principle of competitiveness, in our opinion, there would be a procedure in which the question of recognizing or not

recognizing the guilt of the defendant was not asked by the judge, but by the prosecutor.

The central stage of the trial is the judicial investigation. In his course, the court re-examines the evidence, both contained in the materials of the criminal case, and additionally submitted to the court parties (Apostolova, 2014).

However, the study of the content of specific articles of the law allows us to conclude that it does not fully reflect the specifics of this activity with reference to judicial stages. In addition, the law itself needs to reflect an important feature - the fact that at this stage the court is not entitled to conduct new investigative actions aimed at active collection of accusatory evidence (search, seizure, control and recording of telephone conversations etc.). Also, the court is not entitled to entrust in the same criminal case the production of operative-search measures aimed at the additional exposure of the person in the act incriminated to him.

No.9. As for the activities of the courts of subsequent instances, there are also certain systemic comments. So, in the appeal process, repeated interrogations are made taking into account the opinions of the parties, but the final decision is made not by the parties, but by the court (Ashirbekova, 2014). As for the decisions taken by the higher courts, they are not formally binding on the lower courts for execution by the lower courts, but in the case of repeated identical decisions, the

criminal case is again sent to the same higher court, which forms a kind of vicious circle (Borodinova, 2014).

The study of practice has shown that any decision of a higher court by a court of first instance is actually enforced and executed with accuracy, without any additional discussions and deviations. This procedure seems to significantly restrict the powers of the court of first instance and needs to be improved.

3. CONCLUSION

Summarizing the conducted research, it is necessary to note the following. Within the framework of this article, we made an attempt to draw attention to the sphere of legislative regulation of criminal proceedings in the Russian Federation (its consideration from the standpoint of internal systemic errors and other problems). Experts in the field of criminal justice do not investigate this sphere primarily, because they usually pay attention to other, more specific problems that arise when criminal cases are initiated.

Many problems have historical and scientific components; some of them are due to the fact that Russian criminal procedure legislation does not fully comply with international standards. It is necessary to create a set of rules and procedures that follow from the

content, which, on the one hand, will create an effective mechanism for the legal regulation of the relevant relations, on the other hand, ensure full respect for the rights, freedoms and legitimate interests of all persons involved in the relevant activities. Most of these problems need to be resolved at the legislative level. In this case, it is advisable to use the positive experience of foreign legislation, as well as international standards in the field of criminal justice.

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