

Improving Criminal Procedure in Checking Crime Reports Taking into Account Problems Arising in Regions of Russia in the Conditions of Their Sustainable Development

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Abstract: The reforms of domestic criminal procedure legislation carried out in Russia in recent years are primarily aimed at increasing the implementation efficiency of person rights and freedoms involved in the sphere of criminal proceedings, the beginning of which, according to the criminal procedure law, is caused by the receipt of a crime report by the competent authorities and verification activities. 1,890.6 thousand crimes were registered in January – November 2020, or 1.2% more than in the same period last year according to the official statistical data of the Internal Affairs Ministry of Russia. The registered crime increase was noted in 50 constituent entities of the Russian Federation, the initiated criminal case decrease was observed in 35 constituent entities. At the same time, 93.9% of all registered crimes are detected by the internal affairs bodies. Thus, the main crime report verification subject is the internal affairs bodies. However, the pre-trial proceeding effectiveness analysis carried out by the internal affairs bodies refers only to crimes, the analysis of which data on the registered crime report number and the number of refusals to initiate a criminal case is not published by the official data of the Internal Affairs Ministry of Russia. At the same time, one of the fundamental indicators of internal affairs body activities is the increase in the unresolved criminal case number, which indirectly indicates a reluctance to initiate criminal cases until the moment when a person who is subject to further prosecution as a suspect is identified during the crime report verification after taking decisions to initiate a criminal case.

1 INTRODUCTION

The dynamics and level of registered crimes in the regions of Russia have shown a steady decline or stable indicators every year since 2016. So, there are 1,890 thousand crimes registered over the past 2 years, which, of course, can be influenced by the decriminalization of crimes carried out recently in Russia, however, the law violation number revealed by the prosecutor's office in pre-trial proceedings, including at the criminal case initiation stage, remains stably high – 5,139 thousand in 2019.

In addition, if the number of initiated criminal cases in 2019 according to the official statistics of the Ministry of Internal Affairs of Russia 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 statistics of the General Prosecutor's Office of the Russian Federation was 2 035.9 thousand, i.e. it exceeded the number of decisions taken to initiate criminal cases.

As the authors in the field of criminal procedure, as well as investigative body practitioners note, crime report verification, as a rule, is carried out by district authorized or operational officers authorized by the inquiry body head with the investigator rights, such a verification due to the fact that the official duties of these persons provide another power scope, is very formal and is more aimed at registering messages with a law enforcement agency, obtaining explanations and transferring the verification

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materials according to the jurisdiction, or the decision issuance by the inquiry body not to initiate a criminal case by the inquiry body head (Logunov, Umnov and Kutuev, 2019).

At its core, the crime report verification should be aimed at finding grounds to believe that criminal act took place, fixing the existing crime traces, and immediately making a decision on the need to initiate a criminal case, which should be currently aimed at reforming the criminal procedural legislation.

However, the criminal case initiation stage is increasingly consistent with the preliminary investigation stage at the present development phase of the Russian Federation. It also includes its own special evidence subject and the materials and information collection that can be used as evidence, if a decision is made to initiate a criminal case, the maximum crime report verification period corresponds to the general period for conducting a preliminary investigation in the inquiry form not in abridged form and is 30 days.

Expanding the procedural and investigative action range that can be performed at the criminal case initiation stage, regulated by the adoption of the Federal Law "On Amendments to Art. 62 and 303 of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation" dated March 4, 2013 No. 23-FZ also increasingly correlates the crime report verification with the preliminary investigation stage.

However, despite the amendments made to the Criminal Procedure Code of the Russian Federation (hereinafter – the RF CPC), in the criminal procedure science and in practice, problematic aspects remain related to the criminal procedural status of such a subject as an applicant, a person in respect of whom the crime report verification is carried out; realization of the defense right at the criminal case initiation stage; crime report verification procedure implementation and registering a reason for criminal case initiation; calling procedure for persons to give an explanation, bringing to responsibility for refusing to appear without good reason; procedural explanation form; procedure for reclaiming and seizing items and documents; lack of the possibility of conducting the verification before starting criminal case initiation, which is especially important if there are formal elements of the crimes under Art. 264.1 of the RF CPC and entails the criminal procedural action replacement with administrative ones, etc.

2 METHODS

The main method used during the research was the dialectical method of objective reality scientific knowledge. The research object and the subject were investigated applying this method in a complex and interrelated manner. The methodological basis of the research also includes such methods as historical and legal method, used in the development study of the criminal case initiation institution, comparative legal method, which made it possible to research the regulatory framework. The complex use of these methods made it possible to achieve reliable, substantiated and well-reasoned research results.

3 RESULTS

Crime report verification should be aimed at finding grounds to believe that a criminal act took place and fixing the existing crime traces, at which criminal procedure legislation reforming should be aimed at currently.

The criminal case initiation reason receipt is formalized in practice by registering it in the crime registering book. When a person submits the application, he is issued a notification coupon with the registration number and the application acceptance date.

However, the procedure for registering the criminal case initiation reason receipt is not established by the criminal procedure law. This activity is regulated by an interdepartmental legal act – the joint order "On the Unified Crime Registration" (together with the "Standart Regulations on the Unified Organization Procedure for Crime Report Reception, Registration and Verification", "Regulations on the Unified Procedure for Criminal Case Registration and Crime Registration", "Instruction on the Procedure for Filling out and Submitting Registration Documents") (hereinafter – the Unified Registration Order).

After Federal Law No. 87-FZ dated July 5, 2007 amended the criminal procedural legislation, the prosecutor's office does not keep Crime Reports Registration Book, i.e. the registration of a crime report received from a prosecutor must be made by authorized person in the appropriate law enforcement agency.

In addition, the norm wording contained in Art. 140 of the RF CPC "to resolve the criminal prosecution issue" is not consistent with Art. 5 of the RF CPC, according to which, criminal prosecution is

"activity carried out by prosecution in order to expose suspect accused of committing a crime", i.e. in an already initiated criminal case.

However, during acceptance legality check of crime report and conducting pre-investigation review, it is taken into account that authorized persons also comply with regulatory laws, i.e. the Unified Registration Order.

Procedure violations of accepting a crime report and conducting the verification are systematically detected by the prosecutor's office at the criminal case initiation stage and are reflected in a relatively constant, about 200 thousand per year, number of disciplinary responsibility against persons for committed violations.

The RF CPC does not regulate the person's obligation who verify the crime report personally to inspect the alleged scene of the incident when establishing a list of procedural and investigative actions.

Section IV of the Unified Registration Order prescribes to perform actions during the pre-investigation check in such a way as to fix the crime traces, as well as to take measures to search for the person involved in the commission of the alleged crime. So, part 25 of the said Order instructs the inquiry body heads, whenever possible, to put into effect special plans for "detecting and arresting persons who have committed grave or especially grave crime", i.e. in fact, if it already becomes known that there are formal elements of the crimes, then according to the RF CPC, a decision should be made immediately to initiate a criminal case, and this regulation, in fact, prescribes the implementation of more actions before the final decision is made.

One of the practical priority areas of the internal affairs bodies, requiring an increase in its efficiency, indicated the need to improve activities when receiving, registering and resolving statements and messages about the crime in 2017 (Rezvan and Fedyukina, 2017).

Practitioners note that the absence of the calling procedure or ensuring the person appearance to receive explanations from them during the crime report verification affects the crime report verification delay, while practitioners did not indicate problems associated with the lack of the procedural explanation form.

We assume that the law enforcement practice developed in the regions allows the use of forms on the basis of interrogation protocols and explanations obtained in the course of operational-search activities, without attaching great importance to the absence of an explanation procedural form in the RF CPC, since

the courts, when considering the criminal case, essentially investigate all evidence orally, and other documents may be recognized by the court as evidence if it is impossible to hear the person in the court session.

However, scientists rightly point out that the absence of procedural form and procedure for obtaining explanations from persons contribute to the exclusion of this procedural action at the further stages of criminal proceedings (Sumin, 2013).

Another problematic aspect that arises in practice at the criminal case initiation stage is the conduct of a procedural action in the form of items and documents seizure. The procedure absence for carrying out this procedural action, procedural form, as well as coercive measures creates problems in law enforcement (Ovsyannikov, 2018).

Such investigative actions as a search and seizure are not allowed during crime report verification, therefore, items and documents seizure is possible during the incident scene inspection or upon the information and documents submission request that are significant for establishing the circumstances during the pre-investigation review. However, requests sent at the criminal case initiation stage are aimed at obtaining information, not documents or items.

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

If it is necessary to seize video recording, for example, from CCTV cameras, it is in practice either seized during the incident scene inspection or by the inquiry body during operational-search activities on the basis of instructions, with subsequent transfer to the investigator, the inquirer.

The absence of a real possibility to conduct the examination prior to criminal case initiation has a significant impact on the establishment of criminal act signs provided for in Art. 264.1 of the RF CPC "Driving a car, tramway or other power-driven vehicle by a person in intoxication state, subject to administrative punishment for driving a vehicle in intoxication state".

If there are intoxication signs and when information is established that a person was previously brought to administrative responsibility for similar actions, law enforcement officers are forced to replace actions aimed at establishing formal elements of the crimes with actions provided for by the Code of Administrative Offenses of the Russian Federation, and then transfer administrative materials

of examinations at the request of an investigator or inquiry officer.

In addition, the absence of coercive measures in region practise at the criminal case initiation stage, as well as the impossibility to conduct such investigative actions as search and seizure, due to the fact that they are associated with a significant restriction of constitutional rights and freedoms of individuals, creates difficulties for obtaining samples required for comparative research during the examination. Such samples can be obtained by the investigator, the inquirer only if the person voluntarily agrees to their removal, while the procedure for such removal in Art. 144 of the RF CPC is not provided.

Problems in practice at the criminal case initiation stage arise when it is necessary to conduct a forensic medical examination in relation to a living person, since coercive measures are not applied at this stage.

4 DISCUSSION

The sentence execution stages were considered in works by such scientists as Ashirbekova, M.T., Islamova, E.R., Kutuev, E.K., Logunov, O.V., Ovsyannikov, Yu.V., Rezvan, A.P., Sumin, A.A., Umnov, S.P., Fedjukina, A.Yu., Chubykin, A.V. et al. The works of Alexandrova, O.P. et al. are devoted to proof at the criminal case initiation stage and the procedural status of its subjects. The works of Shcherbakov, A.V. are devoted to ensuring the rights of persons and subjects involved in criminal proceedings. (Shcherbakov, Smirnova, Budanova and Shabanov 2020), Alexandova, O.P. (Asadov, Alexandrova O., Budanova, Alexandrova V., Borisov, 2020) et al.

Some authors, propose to establish an explanation form in the Instruction "On the Consideration Organization of Citizens Appeals in the System of the Ministry of Internal Affairs of the Russian Federation", approved by Order of the Ministry of Internal Affairs of Russia dated September 12, 2013 No. 707 in order to increase the activities efficiency at the sentence execution stage, but this circumstance, in our opinion, will not solve the above problems, since fixing the form in the Instruction will not give this document a procedural status (Ashirbekova, 2012). We believe that the opinion of the authors proposing to complete Art. 144 of the RF CPC with the rule establishing the procedure for obtaining an explanation from persons, explaining to them their rights, as well as the obligations to appear to give an explanation, supported by the monetary penalty, in

the event of their failure to appear without good reason (Aleksandrova O., 2019).

Another controversial issue considered by the authors in the criminal procedure field is the absence of the prosecutor's right to make decisions on the initiation or refusal to initiate the criminal case.

Thus, the authors note that the prosecutor's deprivation of the right to make a decision to initiate the criminal case based on the materials of the ongoing prosecutor's check creates an unreasonable delay in the response time to possible criminal law violations (Islamova and Chubykin, 2016).

However, the legislator position on this issue, in our opinion, was based on the separation of the prosecutor's office control over the observance of the rule of law in pre-trial proceedings and its own implementation of pre-trial proceedings (Ashirbekova, 2012).

5 CONCLUSION

1. The crime report verification procedure and crime report registration is not regulated by the criminal procedure law, the authorized official actions are provided only in an interdepartmental order on the single regulation approval.
2. The calling procedure for persons to give an explanation, responsibility for refusing to appear without good reason as well as procedural explanation form are absent in the RF CPC, which leads to a delay in the pre-investigation check, and also entails the possibility of recognizing the received explanation from the person as invalid evidence.
3. The absence in the RF CPC of the procedure for reclaiming and seizing items and documents also creates difficulties in law enforcement when checking a crime report, since the procedure, procedural form of such seizure, action of investigator, inquirer in case of person's refusal to issue such items and documents are not provided.
4. The inability to carry out such investigative action as examination prior to criminal case initiation in the crime sign presence under Art. 264.1 of the RF CPC entails the replacement of criminal procedural actions with administrative ones.
5. The terms for conducting forensic examinations are not established in federal legislation. Departmental regulations provide

for a possible period for conducting examinations beyond the period of the crime report verification.

6. The authors rightly note that during crime report verification in order to realize the rights and legitimate interests of all persons involved in it, it is necessary to establish specific types of procedural actions, indicating the procedure for their conduct, the list of subjects who can participate in them, provide for interim measures that can be used in these procedural actions, the procedural form of such actions and the procedure for their appeal.
7. The crime report verification procedure and crime report registration is not regulated by the criminal procedure law, the authorized official actions are provided only in an interdepartmental order on the single regulation approval.
8. The calling procedure for persons to give an explanation, responsibility for refusing to appear without good reason as well as procedural explanation form are absent in the RF CPC, which leads to a delay in the pre-investigation check, and also entails the possibility of recognizing the received explanation from the person as invalid evidence.
9. The absence in the RF CPC of the procedure for reclaiming and seizing items and documents also creates difficulties in law enforcement when checking a crime report, since the procedure, procedural form of such seizure, action of investigator, inquirer in case of person's refusal to issue such items and documents are not provided.
10. The inability to carry out such investigative action as examination prior to criminal case initiation in the crime sign presence under Art. 264.1 of the RF CPC entails the replacement of criminal procedural actions with administrative ones.
11. The terms for conducting forensic examinations are not established in federal legislation. Departmental regulations provide for a possible period for conducting examinations beyond the period of the crime report verification.

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