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Review Article

TO THE QUESTION OF MODERNIZATION PRELIMINARY (PRE-JUDICIAL) PROCEEDINGS IN CRIMINAL CASES

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Abstract
The Code of Criminal Procedure of the Russian Federation was not able to establish a specific decision on the issue of reforming criminal proceedings, in particular in resolving issues of pre-trial criminal proceedings. In such cases, it is very important to determine the direction of further criminal procedure legislation, which is followed by state bodies in their criminal prosecution of perpetrators of a crime. Also, the law enforcer expects from the legislator not only a thorough analysis of the organizational and legal system of the preliminary investigation bodies, but also the inclusion in the practical activities of the law enforcement bodies of sufficiently effective normative legal acts that assist in the qualitative investigation of crimes [1, p. 58].

The reason for the changes and amendments can be explained by the fact that in the preparation of a normative legal act certain rules are not considered, the exclusion of which entails the formation of public relations, which did not find their fixation in the act, or normative legal acts have been adopted sequentially to resolve them, where first, deficiencies are identified that need to be made with appropriate adjustments. It is not an exception to the Code of Criminal Procedure.

Keywords: criminal procedure legislation, preliminary proceedings, modeling of preliminary (pre-trial) proceedings, law-making, principles of law-making, reform of preliminary proceedings.

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INTRODUCTION

The first changes were introduced before the entry into force of the Code of Criminal Procedure of the Russian Federation. At the same time, the incomplete or improper absence of legal regulation of a separate procedural institution cannot fully carry out their activities in accordance with the rule of law. The need to modernize pre-trial production in modern conditions, the need for its restructuring creates the need to use the method of modeling social and legal processes, which, according to A.L. Obolkina is rarely used in lawmaking, and is generally ignored regarding the organization and procedure of pre-trial proceedings [2, p. 184].

In this regard, Doctor of Law, Professor S.A. Avakyan proposes ten constitutional and legal principles of lawmaking and justifies the need for their application in the process of preparing the law, with the help of which it is possible to simulate the effective "future" of the bill [3, p. 22].

METHODOLOGY

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The author comes to the conclusion that it is necessary to modernize the preliminary (pre-trial) criminal proceedings.

RESULTS AND DISCUSSION

The first thing you need to pay attention to. Firstly, it is necessary to determine the purpose and development of the concept of legislative changes. First of all, the main condition is the need for a clear definition and representation, which requires amendments to the Code of Criminal Procedure. This means that the decisive beginning in the formation of the bill should be based on the fact that without this document it is not possible to regulate public relations in the relevant field. If in the process of modeling the project the Developer does not fully determine the goal to which he is striving, then he is unlikely to achieve the desired result. That is why one of the main successful decisions in legislative activity is the clear formulation of its goals. The next prerequisite is modeling on the subject and content. This means understanding and weakening the conceptual apparatus of the bill, the formation of a more or less clear internal structure. The authors of the bill determine the need to make all changes to the Code of Criminal Procedure by the fact that "investigators often refuse to order additional investigations in those institutions where the accused himself would like to go." Which subsequently affects the fact that there may subsequently be biased assessments.

Based on the foregoing, the bill will be aimed at satisfying the right to defend the accused or suspect, since the amendment will actually become a very weighty argument in defense of the rights of all citizens “who are in the status of a suspect or accused” [2, p. 185]. However, this statement does not meet the purpose of criminal proceedings, in particular article 6 of the Code of Criminal Procedure, which establishes that bodies and officials conducting criminal proceedings are initially required to provide the opportunity to protect the rights and legitimate interests of individuals and legal entities affected by crimes. Moreover, this provision confirms that the adopted bill will increase the already high tendency to strengthen guarantees of the rights of participants through protection [4, p. 16].

The second thing you need to pay attention to. You need to make sure that legislative consolidation is carried out taking into account national and territorial features. Recall that the

"Code of Criminal Procedure of the Russian Federation made an attempt to" radically change ... the paradigm of criminal proceedings and move from the traditional (for Russia) "mixed" continental type process to a fully adversarial process "[5, p. 380].

The foregoing expresses the tradition of Anglo-American legal proceedings, where the most important traditional characteristic is the procedural equality and equality of parties with a high level of initiative to collect evidence in their favor. It should also be borne in mind that there is a clear separation when the prosecutor is not responsible for collecting all the evidence relevant to the case. In this case, the functions of the evidence process end only in the collection and submission of the indictment to the court.

Therefore, the preliminary investigation can be analyzed as a common activity, on the one hand, of bodies and persons conducting criminal proceedings, on the other hand, of the accused or suspect and persons representing their interests, which does not provide a qualitative and complete study of all the circumstances of the case. In this case, it is enough to collect evidence for the court, which clearly confirms the person's involvement in the crime. That is why the basis of the Anglo-Saxon model of criminal proceedings before the authorities conducting the investigation, there is a significant task of collecting data testifying to the fact of the crime and the guilt of the suspect, that is, an exclusively accusatory task. In this case, the point of view supported by many processors is considered reasonable, that the immediate task of pre-trial proceedings should only be the preparation of the grounds, conditions and evidence for the court to resolve the case at the trial stage [6, p. 78].

Thus, according to A.M. Baranov, the amendments "go beyond the scope of national legislation, therefore, criminal proceedings should be carried out in such a volume that allows for the possibility of a trial, and not become an end in itself and replace the court with regard to establishing the truth of the criminal case "[7, p. 43].

The third thing you need to pay attention to. If amendments to the law are envisaged, they must be adopted, but their place in the law must be determined. The need for a bill can be formally obvious and logical. As the authors of the bill explained, the reason for its development is cases of refusal of the preliminary investigation to include the results of inspections in criminal case materials [2, p. 186].

We cannot agree with the opinion of K. Dobrynin, one of the authors of the analyzed draft law, who categorically states that studies conducted on the initiative of the investigator and attached to the case file can give biased assessments, in contrast to the defense, which is an objective expert opinion. The opinion of the author of the bill is subjective in relation to the assessment of the preliminary investigation: the adoption of this bill is not provided for by other legal acts; The Code of Criminal Procedure contains provisions providing, among other things, protection, the possibility of resolving the issue during the trial, the article provides for the possibility for participants in the trial to submit an application, including the conduct of a forensic examination [8, p. 130].

The next stage for the modernization of preliminary (pre-trial) criminal proceedings is to determine the purpose and style of regulation and think about the culture of the bill.

The purpose and style of regulation are interconnected, because what the author of the bill wants depends on the language in which the law is presented. It is necessary to follow the rules of the Russian language, that is, think about improving the text, make it literate. It should be noted that the issue of procedural independence of the investigator caused a lot of controversy during the preparation and adoption of the Code of Criminal Procedure. First of all, I took as a basis the experience of criminal procedure regulation and the organization of preliminary investigation in pre-revolutionary Russia, when, during the judicial reform of 1860-1864, investigators were equated with judicial officers, which fully ensured their independence and independence. In addition, in the legal literature the procedural independence of the investigator has always been considered as one of the achievements of the criminal process. At the same time, it should be noted that with the introduction of the Code of Criminal Procedure of the Russian Federation "procedural independence shook, became transparent", and the role of the investigator was already practically reduced to "an official for minor assignments".

Further, it is necessary to determine the possibility of implementing the bill with a mandatory analysis of its direct and side effects. It is also necessary to check the future effectiveness of the bill. In the case of the adoption of any bill to predetermine other duties of the investigator to ensure the rights and legitimate interests of the suspect (accused), there may be cases when an official is unlikely to be able to independently direct the course of the investigation and decide on the performance of investigative and other procedural actions, the amount of mandatory procedural and investigative actions and decisions of the final investigation of the criminal case, and it is unlikely that the bodies of pre-trial investigation will be able to reduce the time between the beginning quently, and the court's decision.

And finally, the last thing you need to pay attention to. An examination is required for each bill.

Examination of the bill will allow at the stage of its development to identify and eliminate inconsistencies, contradictions not only in the legislation, but also in relation to other rules of law. Moreover, the examination should be independent, the results of which will slow down the further movement of the bill in the early stages of legislative activity. Moreover, the analysis of the bill should be carried out not only for corruption, but in our case, first of all, it is necessary to exclude the adoption of the bill, which is designed to ensure, on the one hand, the rights of the suspect and the accused, on the other, it automatically violates the rights of participants in criminal proceedings with parties of the prosecutor's office [9-11].

CONCLUSION

Thus, based on the proposed principles (principles), taken into account when developing the bill, and taking into account the specifics of the criminal procedure code, A.L. Obolkina combines some of the rules with an analysis of the amendments to Article 159 of the Code of Criminal Procedure of the Russian Federation "Obligation to consider applications," according to which the investigator will be required to attach the results of independent examinations to the criminal case. "The suspect or the accused, his defense counsel, as well as the victim, civil plaintiff, civil defendant or their representatives cannot be denied access to evidence from the criminal case, including expert opinions."

In turn, we note that modeling of the Russian criminal procedure legislation is not a solution to all problems, but only an auxiliary tool for improving theory and practice. In this regard, the modeling of legal institutions should be preceded by careful preparation, containing a selection of information about its initial state, the reasons for the situation. The modeling process is impossible without replacing the causes of the shortcomings of the preliminary investigation, identifying ways to eliminate these causes and the shortcomings themselves, while there is a possibility of choosing the best solution. If during the verification of the reliability, necessity and sufficiency of the data obtained as a result of modeling, it turns out that the tasks are not solved, the modeling goals are not achieved or are not fully achieved, then the model (bill) must be corrected or replaced with another model (another bill). "

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