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Models of the Early Stages of Criminal Justice and Ensuring Access to Justice in a Digital Environment

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ABSTRACT
The article is devoted to the comparative analysis of the models of the initial stage of criminal proceedings operating in different states, identifying their most important characteristics, advantages and disadvantages, determining the procedural and organizational directions for the further development of preliminary (pre-trial) proceedings. It is shown that the division of pre-trial proceedings into two independent states (initiation of a criminal case and preliminary investigation), which persists in Russia and a number of other states of the Slavic legal family, determines the restriction of access to justice. The proposal to combine the two stages into one is substantiated, and the beginning of the preliminary (pre-trial) proceedings is to consider the receipt of a statement or other message about a crime. Modern trends in the development of digital relations confirm the need for digital transformation of the initial stage of criminal proceedings, including the transition to a predominantly electronic reception of statements of crime.
Keywords: *Convergence of rights, divergence of law, the initial stage of criminal proceedings, criminal proceedings, digital relations, registration of statements of crime.*

1. INTRODUCTION

The convergence of the law of different states is a natural result of the post-war processes of the middle and second half of the 20th century. The creation of international humanitarian organizations, including the United Nations, the Council of Europe, the European Union, the adoption of international instruments in the field of human rights have a significant impact on the national legislation of various states.

These processes led to the spread of a universal humanitarian system of values, the creation of international standards in the field of justice and their implementation into national legislation, to a change in the relationship between the national and supranational levels of justice, to the convergence of the continental and Anglo-Saxon legal family, as well as individual institutions that characterize them.

At the same time, in the sphere of criminal proceedings, convergence has mainly affected the judicial stages, and to a much lesser extent - pre-trial proceedings in criminal cases. Pre-trial proceedings in different states are in themselves less susceptible to rapprochement processes due to belonging to different legal systems (Anglo-Saxon and continental) and the traditions that have developed as a result (adversarial and mixed criminal procedure, respectively).

Nevertheless, the convergence of the pre-trial procedure is possible and necessary. This need is due to the importance of pre-trial as the initial stage of the criminal process, providing access to justice.

An important component of preliminary proceedings is the initiation of criminal procedural activities. At the same time, qualitative differences in the model of opening criminal proceedings are observed even within the same legal family. Meanwhile, the issues of the correlation of procedures in different states are becoming increasingly important in connection with the development of international cooperation in criminal matters [1].

The purpose of this study is to study the experience of organizing the initial stage of criminal procedural activity in various states, identifying models of this activity, determining their advantages and disadvantages, and substantiating proposals aimed at improving legislation and law enforcement practice.

2. LITERATURE REVIEW

In modern doctrinal research, much attention is paid to the transformation of pre-trial proceedings.

Various procedural aspects of optimization of preliminary proceedings are analyzed: which state body (court, prosecutor, police) should carry out pre-trial investigation and what should be the balance of powers of these bodies [2- 6], stages of investigation are studied [7], it is proposed establishment of simple and effective procedures at the initial stage of criminal procedural activity (including refusal to initiate a criminal case, which is traditional for the states of the post-Soviet space, as an independent stage, often turning into quasi-investigation) [8], [9].

In addition to issues of a procedural nature, the prospects for optimizing preliminary (pre-trial) proceedings in the context of the development of digital relations are

associated with the introduction of digital technologies into the activities of an investigator, interrogator, prosecutor, and court.

The article analyzes the gradual transition of states, including the post-Soviet space, to the acceptance of statements about a crime in a new - electronic - form. The advantages of this system are noted: automatic registration of applications does not allow to artificially reduce the number of applications and provides access to justice, prompt notification of an application received by state bodies authorized to investigate a crime, and a quick start of investigation activities [10]. Of particular interest is the study of the experience of states where such a system has already been introduced [11].

The prospects for the introduction of electronic business [12], the use of artificial intelligence [13], and other technological solutions [14] are assessed.

At the same time, ways to optimize the initial stage of criminal justice in the context of the development of digital technologies are still controversial, and additional research is required here.

3. METHODS OF ASSESSMENT

The article uses the following methods:

- Phenomenological, in which the initial stage of criminal proceedings, access to justice and digital relations are considered as phenomena, that is, events that have content, meaning, identified during the study;
- The structural-functional approach underlies the consideration of the initial stage of criminal proceedings as a certain integrity, designed to ensure, inter alia, access to justice; the role of digital technologies in achieving this goal is determined;
- Comparative legal, thanks to which the comparison of the two main models of the initial stage of criminal proceedings is carried out, their differences, advantages and disadvantages are shown;
- General logical methods: analysis and synthesis, induction and deduction, abstraction and ascent from the abstract to the concrete.

4. TWO MODELS OF THE INITIAL STAGE OF CRIMINAL JUSTICE: THE MOST IMPORTANT DIFFERENCES

There are two models for the initial phase of criminal justice. The first, prevailing, is the Western model, when the initiation of a criminal case does not form an independent stage, within which a special decision is made to start an investigation.

In the states of the Anglo-Saxon legal family, there is no division into preliminary and judicial proceedings, there is no act on the initiation of a criminal case, and the formalization of criminal prosecution occurs already in court: in the judicial stages it is replaced by an indictment (for example, English indictment).

For example, in the United States, in theory and in practice, it is most often considered to have started proceedings on a specific case, and with it a preliminary (pre-trial) investigation, from the moment information about a crime is received and registered (usually by the police). Information is understood not only as information that becomes known from statements submitted by interested persons or organizations to the authorities authorized to take actions to solve crimes, but also what is learned about in the course of ordinary police activities [15].

From the moment of registration, the act or event containing the signs of a crime becomes one of those that are commonly referred to in the United States as “crimes reported to the police” or “reported crimes”.

In 2017, 8.841 million crimes were recorded in the United States; of which 7.694 million are against property and 1.247 million are violent crimes; their level per 100 thousand population was 2362 and 383 crimes [16].

Obtaining and registering information about an event or someone's act containing signs of a prepared, committed or committed crime are the basis for performing a wide range of actions (operational-search and investigative) to identify, fix, verify and study factual data that may be after appropriate verification and registration were used as evidence in the implementation of criminal prosecution in court, as well as for the application of measures of procedural coercion (drive, detention, arrest, etc.).

Based on the results of this activity, decisions are made that determine the overall fate of the case and the person brought to criminal responsibility - on the termination of the pre-trial investigation, initiation of criminal prosecution, etc. The police inform the public prosecutor (public prosecutor, or government's attorney) about the crime, submits reports (reports, reports) about the arrest, the results of interrogations, etc. The prosecutor decides whether to continue the investigation or dismiss the case and release the suspect from custody.

If the prosecutor decides to continue the investigation, a complaint is prepared and submitted to the magistrate's court, a court of limited jurisdiction headed by an official with judicial functions. From this moment on, pretrial prosecution begins.

In continental European countries with a mixed type of criminal procedure, despite the detailed, detailed regulation of pre-trial proceedings [17], the initial moment

of the criminal case is also not formally recorded, and the investigation bodies (the police and other executive bodies authorized to conduct the investigation) proceed to investigation (in the form of a police inquiry) immediately after the receipt of information about a crime without any decision to initiate a case. That is, the actual stage of verification of a crime report, based on the results of which a special reasoned procedural decision would be made, is not provided for by the criminal procedural laws of Western European states.

During the police inquiry (which in many states is allocated to the first independent stage of the criminal process), information about the crime is confirmed or denied, evidence is collected, actions are taken to identify the person who committed the crime and solve the crime. Upon completion of the inquiry, his materials are sent to the prosecutor's office or another authorized body, which considers the issue of initiating or refusing to initiate criminal prosecution (and not a criminal case).

If criminal prosecution is initiated, then the case is referred either to the preliminary investigation body or immediately to the court for its consideration on the merits.

In the Principality of Liechtenstein, the inquiry ends either by transferring the case to the investigating judge for the preliminary investigation (for this purpose, the prosecutor issues a request for the commencement of the preliminary investigation, after considering which, the investigating judge decides whether it should be open, and in case of a positive decision, begins the investigation), or by drawing up indictment and sending the case directly to the court of first instance, or by a decision of the prosecutor to terminate the proceedings.

In France, a preliminary investigation is carried out in cases of the most dangerous violations of the criminal law - crimes: the prosecutor, having instituted criminal prosecution in the case of a crime, transfers the materials to the investigating judge. In cases of criminal misconduct and offenses, after the initiation of criminal prosecution, the case is sent immediately to the appropriate court, which is obliged to accept it for proceedings and consider it on the merits. Inquiry may precede preliminary investigation, and in practice is usually carried out, but *de jure* it is not necessary.

There is no preliminary investigation in Germany. Since 1974, the only form of pre-trial proceedings has been inquiry. It is carried out on the basis of a received report of a crime or on a statement of criminal prosecution. The purpose of the inquiry is to collect information that provides a basis for the prosecutor's decision to initiate a public prosecution (§§ 151, 160 paragraph 1, § 170 paragraph 1 of the German Code of Criminal Procedure). After the initiation of a public charge, the case is immediately referred to the court.

Unlike Germany, Switzerland has retained the dualism of inquiry and investigation: after a police inquiry, the prosecutor issues an order to open a preliminary investigation. However, deviations from this rule are also allowed: a preliminary investigation can begin without a prior inquiry (paragraph "a", part 1 of article 309 of the CCP of Switzerland), since the prosecutor's office has the right to open a preliminary investigation even if there are sufficient suspicions about the commission the acts follow from her own data (and not only from the information held by the police, from police reports, from a statement of a criminal act). However, de facto this is rarely the case. The very same inquiry begins from the moment when the police, through the collection of information or otherwise become aware of the circumstances giving rise to suspect a person of committing a criminal offense. For this, it is already sufficient for a competent public authority to accept a statement of a crime or a complaint on private prosecution cases, unless they are completely unfounded [18].

Such a procedure, when criminal proceedings begin with an inquiry, is also provided for in Austria, Spain, Belgium, Finland, etc.

At the same time, it should be borne in mind that in some states that have experienced a significant influence of Soviet law, as before, the inquiry and preliminary investigation do not follow each other, but are two alternative forms of investigation.

Of the post-Soviet states, Georgia, Kazakhstan, Ukraine, Moldova refused to initiate a criminal case. In Latvia, although a decision is made to start a criminal process, there are no rules on conducting a pre-investigation check in the CPC. It is not provided for the initiation of a criminal case in Lithuania. In Estonia, criminal proceedings are initiated by an investigative body or prosecutor's office of the first investigative or other procedural action if there is a reason and basis, in Kyrgyzstan - by registering an application, report of a crime and (or) misconduct in the Unified Register of Crimes and Misdemeanors (in which the date is automatically recorded entering information and assigning a criminal case or misdemeanor case number). The states of the post-socialist space, for example, Bulgaria, also abandoned the stage of initiating a criminal case.

The second, less common, is the eastern model, when the stage of initiation of a criminal case in the traditional Russian sense is mandatory, and a decision to initiate a criminal case begins a public criminal prosecution on behalf of the state in connection with the committed criminal act, which ensures the subsequent procedural actions of the bodies of inquiry, preliminary investigation , court and at the same time entails the need to ensure the right to defense of the person against whom the prosecution is carried out.

This model of the initial stage of criminal proceedings has been preserved in Russia and a number of states of the Slavic legal family: in Azerbaijan, Armenia, Belarus, Tajikistan, Turkmenistan, Uzbekistan.

5. MODES OF ENSURING ACCESS TO JUSTICE

The first, the Western, is the model of initiating a criminal case (in the states of both the Anglo-Saxon and the continental system of law), to a greater extent, provides access to justice. In it, obstacles to starting an investigation and bringing charges are either absent altogether, or significantly less than in the second model due to the absence of an autonomous stage of initiating a criminal case and such a decision as a decision to refuse to initiate a criminal case.

Identifying the circumstances that hinder the filing of charges and making decisions that terminate proceedings (and thus block access to justice) are possible and widely used in both models. But in the second, eastern model of procedural activity to bring charges, there is a mandatory (inevitable) independent stage of initiation of a criminal case, in which, based on the results of a quasi-investigation (pre-investigation check and its foreign counterparts), a decision is made that allows or excludes further procedural activity.

Thus, in the second model, access to justice can be limited not only by terminating the proceedings and refusing to bring charges, but also, additionally, by refusing to initiate a criminal case. Moreover, decisions on the refusal to initiate a criminal case prevail in the structure of the final decisions of the first stage of the criminal process in states that have chosen the second (eastern) model. So, in Russia for the period 2006–2018. The number of procedural decisions to initiate a criminal case decreased by two times (from 3.3 million to 1.65 million), while a significant (by 2.3 million) increase (from 4.5 million to 6.8 million) .) during this period, the number of procedural decisions on refusal to initiate a criminal case accepted based on the results of the audit (while their number remains unchanged at the level of 10-11 million), of which every fifth was recognized by the prosecutor's office as illegal or unfounded.

Restrictions on access to justice in the eastern model of criminal proceedings are aggravated by:

a) The unresolved problem of violation of the established procedure for receiving and registering messages about a crime.

Therefore, in Russia, the overwhelming majority (three quarters) of all detected violations of laws in pretrial proceedings are associated with the reception, registration and consideration of reports of crimes. This is evidenced by statistical information. For example, in January-May 2019, prosecutors identified 1,518,596 violations of the law committed during the reception, registration and resolution of crime reports [19]. In addition, according to the data of victimological studies, only one fifth of the total number of victims of crimes turns to law enforcement agencies for help, while encountering opposition when filing applications (about 20% of cases).

The most common violations in the reception and registration of reports of crimes include consideration of a report of a crime not in accordance with the provisions of the Criminal Procedure Code of the Russian Federation, but in accordance with the provisions of Federal Law No. 59-FZ of 02.05.2006 "On the Procedure for Considering Citizens' Appeals", writing it off to a nomenclature case as not containing reasons for conducting a procedural check, returning to the applicant or redirecting a message to another body without registering it, refusing to accept a message (application), hiding a message from registration, leaving a message without consideration, not entering a message about crime, failure to issue a notification coupon to the applicant.

In some cases, the reason for these violations is the commission of crimes by law enforcement officers in order to improve statistical indicators;

b) The excessively long terms established by law for checking a crime report and making a final decision on its results, reaching in some cases 3 months (Art. 173 of the Code of Criminal Procedure of the Republic of Belarus);

c) The possibility established by law to suspend an inspection on a statement or report of a crime (given that a decision to suspend proceedings at any stage is an independent decision limiting access to justice). Such a norm is provided for by Art. 173.3 of the Code of Criminal Procedure of the Republic of Belarus in relation to cases of non-receipt of a response to an international request or non-receipt of the results of examination or verification of financial and economic activities;

d) violation of the statutory deadlines for checking a crime report and making a final decision based on its results in law enforcement, and these violations can be calculated in years and even lead to the expiration of the statute of limitations for criminal liability [20].

Of course, carrying out “barrier-free”, “continuous” procedural activities for each crime report (and not only for that part of them, for which a decision was made to initiate a criminal case) leads to an increase in the burden on law enforcement agencies. For example, the German prosecutor's office has only 5,150 prosecutors in the district and higher courts and 943 prosecutors in the district courts to prosecute approximately 9 million crimes per

year. However, this circumstance does not lead to the desire of states with a Western model of initiating a criminal case (or rather, criminal prosecution) to borrow the Eastern model.

On the contrary, as already noted, there is a gradual rejection of a number of states in the post-Soviet space from the eastern model of initiating a criminal case in favor of the western one.

An important argument in favor of refusing to separate the autonomous stage of initiating a criminal case is its increasing convergence with the preliminary investigation, in which the division of pre-trial proceedings into two stages becomes artificial and unjustified: the list of procedural actions, including investigative actions, is expanded, the subsequent use of explanations in As evidence (if an inquiry is carried out in an abbreviated form), the participants in the pre-investigation check are explained and ensured almost the same scope of rights as in the preliminary investigation. It is no coincidence that in the latest decisions of the European Court of Human Rights in cases against the Russian Federation, the conventional concept of "accused" is extended to the stage of initiating a criminal case: the characteristics of the procedural activity carried out bring it closer to the preliminary investigation [21].

6. APPLICATION OF DIGITAL TECHNOLOGIES FOR ACCESS TO JUSTICE

To eliminate these shortcomings of the initial stage of criminal proceedings and ensure access to justice, primarily in states with an Eastern model of initiating a criminal case, a wider use of digital technologies is important.

Currently, the use of digital technologies as part of the initial stage of criminal proceedings among different states has a heterogeneous development.

In the Russian Federation, Armenia, Azerbaijan, Turkmenistan, Tajikistan, Uzbekistan, electronic information can serve as a pretext for initiating a criminal case (Art.178 of the CCP of Armenia), carriers of computer information can be annexes to the protocols of investigative and procedural actions (Art.29 of the CCP of Armenia, Art. 51 of the Criminal Procedure Code of Azerbaijan, art. 99 of the Criminal Procedure Code of Belarus), technical means of control are used in covert investigative actions (art. 98.6 of the Criminal Procedure Code of Armenia, art. 259 of the Criminal Procedure Code of Azerbaijan, art. 214 of the Criminal Procedure Code of Belarus).

Kazakhstan, Ukraine, Georgia, Estonia, Kyrgyzstan, Moldova are introducing digital technologies into criminal proceedings more intensively. In the criminal procedural legislation of these countries, the term "electronic format of criminal proceedings" is enshrined (Art. 42-1 of the Code of Criminal Procedure of Kazakhstan), there is a Unified Register of pre-trial investigations (Art. 179 of the Code of Criminal Procedure of Kazakhstan, Art. 150 of the Code of Criminal Procedure of Kyrgyzstan), a register of materials of pre-trial investigation (Art. 109 of the CPC of Ukraine), an electronic criminal case is applied (Art. 42-1 of the CPC of Kazakhstan, Art. 210 of the CPC of Estonia), a special electronic control system (Art. 14.34 of the CPC of Georgia).

Digital technologies are actively used in these states with a remote method of interaction between law enforcement agencies and participants in criminal proceedings (Art. 243 of the Criminal Procedure Code of Georgia, Art. 110 of the Criminal Procedure Code of Moldova, Art. 232 of the Criminal Procedure Code of Ukraine).

The use of electronic means during covert investigative actions is not only enshrined normatively, but also cases are named when violations in use will be grounds for recognizing the results of procedural activities as unacceptable (Art. 143.4 of the Criminal Procedure Code of Georgia, Art. 132.9 of the Criminal Procedure Code of Moldova, Art.).

In many states, today it is already possible to file a crime report online (Australia, Denmark, Iceland, Kazakhstan, the Netherlands, Norway, UAE, Portugal, Singapore, Slovenia, USA, Finland, Sweden, etc.). In general, electronic filing with a statement of a crime is allowed only if a number of conditions are met: if an immediate response from law enforcement agencies is not required, if the applicant has confirmed that he has been warned about criminal liability for reporting deliberately false information, if the crime belongs to a certain category, etc. [22].

The level of development of criminal procedural legislation in the state shows the level of involvement of digital means in criminal procedural relations.

The introduction of online services for the filing of statements by citizens about a crime in states with an eastern model of the initial stage of criminal proceedings and automatic registration of such statements will largely eliminate the existing shortcomings of the current procedure for receiving and registering reports of crime. Automatic registration will exclude the possibility of abuse in the acceptance of applications and thereby become a guarantee of ensuring access to justice.

7. MAIN RESULTS

The analysis leads to the conclusion that the abandonment of the traditional stage of initiating a criminal case, the construction of pre-trial (preliminary) proceedings on the model of the Western model in Russia will provide a greater degree of access to justice.

Refusal to initiate a criminal case should be combined with a solution to the long-standing problem of violation of the established procedure for receiving and registering reports of a crime.

An important step in this direction should be the introduction of automatic registration of crime reports filed through online services, taking into account the experience of states that already apply such registration.

8. CONCLUSION

Further transformation of preliminary (pre-trial) criminal proceedings is associated with both procedural and organizational aspects. The results of the study reflect the trend towards convergence of the architecture of pre-trial in the states of different legal families and with different types of criminal proceedings. A manifestation of this trend is the gradual refusal of the states of the post-Soviet and post-socialist space from their traditional stage of initiating a criminal case and the unification of all preliminary proceedings into a single stage, which can become an additional guarantee of ensuring access to justice.

Modern trends in the development of digital relations confirm the need for digital transformation of the initial stage of criminal justice and determine the direction and objectives of such a transformation, including the transition to a predominantly electronic reception of statements of crime. In general, it is impossible to improve criminal procedural activity without integrating it with information technology.

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