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RUSSIAN CRIMINAL PROCEEDINGS: PROCEDURAL FORM VS RULES OF PROCEDURAL RECORD KEEPING

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Abstract. The article examines the law-making trends associated with the strengthening of the formalization of criminal procedure law and expressed in the content of the Criminal Procedure Code of the Russian Federation with purely technical and technological rules that determine not so much the high purpose of the criminal procedure form, but the procedure for judicial, prosecutor's and investigative paperwork and document management.

The article explores the reasons for the emergence of such trends, which are associated with two objective factors inherent in the formation of the early Soviet criminal justice system in the 1920s. In addition, an attempt is made to identify the reasons that led to a sharp increase in the considered trends at the turn of the XX-XXI centuries and their reflection in the text of the current Criminal Procedure Code.

In this regard, it is hoped that this shortcoming in the national law-making policy will be eliminated as soon as possible and that the rules of criminal procedure paperwork will be gradually excluded from the scope of legislative regulation. It is noted that the form of criminal procedure that follows from the Federal Law, which is predetermined by proper legal guarantees of the quality of the intended results, cannot be identified with the rules of criminal procedure record-keeping and document management.

Keywords: *law-making policy; law-making; criminal proceedings; criminal procedural form; criminal procedural acts; criminal procedural documents; criminal procedural law.*

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Introduction

To date, the law-making policy of the Russian Federation, in particular the policy pursued in the field of criminal procedure regulation, is characterized by rather destructive, but at the same time interesting trends. They are aimed at strengthening the formalization of the activities of the court, prosecutor's office, bodies of inquiry, preliminary investigation, non-governmental participants in criminal proceedings and are expressed in the intention to "legalize" (settle precisely through federal law) a much wider range of issues arising in the field of criminal justice than common sense requires.

Currently, many of the norms included in the content of the Criminal Procedure Code of the Russian Federation (hereinafter referred to as the Code of Criminal Procedure of the Russian Federation, the Code) are generally devoid of any truly legal value ("high" purpose). They are not pre-determined by legal guarantees of the suitability of the results of the relevant procedural actions, legality, validity and adequacy (fairness) of procedural decisions, the good quality of mechanisms for the implementation of other criminal procedural powers and competence, but *assume a pronounced technical or technological nature*. In other words, *such norms establish not so much the procedure of criminal proceedings as the rules of criminal procedure paperwork.* As some modern publications rightly point out, the current Code of Criminal Procedure of the Russian Federation is increasingly beginning to resemble a "soulless" instruction addressed to ordinary officials[1], a kind of administrative regulation[2]. While one of the authors of this article, fully sharing these assessments, at one time expressed an even more harsh judgment-he called these law-making trends the gradual transformation of the Code from embodying the "high" meaning of the criminal procedure form of a legislative act into a kind of "memo" for illiterate law enforcement[3] officers.

These legislative excesses are evident when you read the literally step-by-step rules for drawing up and executing a number of procedural documents. For example, Part 2 of Article 146 of the Code of Criminal Procedure of the Russian Federation explicitly obliges interrogators and investigators to indicate in the decision to initiate a criminal case the date, place and time of its issuance,

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[1] See: *Pobedkin A.V.* The Code of Criminal Procedure: a form of living law or a "soulless" instruction // Criminalist's Library. Scientific journal. 2017. № 3. P. 111.

[2] See: *Grigoriev V.N.* Criminal procedure form or administrative regulations: current trends // Bulletin of St. Petersburg State University. Right. 2018. Vol.9. Issue 1. P. 44.

[3] See: *Rossinsky S.B.* The Criminal Procedure Code of the Russian Federation: the embodiment of the "high" purpose of the criminal procedure form or a "memo" for illiterate law enforcement officers? // Laws of Russia: experience, analysis, practice. 2021. № 6. p. 42.

information about its author, the reason and grounds for initiating a criminal case, and a preliminary legal assessment (qualification) of what happened. Similar rules are also established for other criminal procedure acts of the bodies of inquiry, preliminary investigation and court: decisions on involvement as an accused (Part 1 of Article 171 of the Code of Criminal Procedure of the Russian Federation), decisions on the appointment of a forensic examination (Part 1 of Article 195 of the Code of Criminal Procedure of the Russian Federation), an indictment (Article 220 of the Code of Criminal Procedure of the Russian Federation) Article 225 of the Criminal Procedure Code of the Russian Federation), a decision on the appointment of a court session (Part 1 of Article 231 of the Criminal Procedure Code of the Russian Federation), a decision (determination) on the termination of a criminal case or criminal prosecution (part 2 of Article 213, Part 3 of Article 239 of the Criminal Procedure Code of the Russian Federation), a sentence (Articles 304-309 of the Criminal Procedure Code of the Russian Federation Decisions of the court of appeal (Article 389.28 of the Code of Criminal Procedure of the Russian Federation), etc. Similar legal requirements are also established for a number of investigative or judicial protocols (Part 3 of Article 166, Part 2 of Article 259 of the Code of Criminal Procedure, etc.), expert opinions (Article 204 of the Code of Criminal Procedure), appeals, cassation, supervisory complaints (Part 1 of Article 389.6, Article 401.4, 412.3 of the Code of Criminal Procedure), and other procedural documents.

It is likely that in the foreseeable future, such trends may lead to even greater law-making excesses, for example, to the "legalizing" of the requirements for the color of paper, technical characteristics of the printing device (printer), the permissible degree of deviation of the handwriting of the author of the protocol from the registration, etc. 476, 477 of the Code of Criminal Procedure of the Russian Federation, the generally binding templates (forms) of investigative, investigative, prosecutor's, judicial and other documents used in criminal proceedings were excluded, that is, finally, one of the "innovative" decisions of the developers of the Code, which for more than five previous years was generally abroad, was annulled. It was beyond the comprehension of the vast majority of specialists and did not stand up to any criticism.

The penetration of office management rules into legislative matters is not limited only to the introduction of requirements for the registration of criminal procedure documents in the Code of Criminal Procedure of the Russian Federation. In reality, there are other legislative provisions of a purely technical and technological nature, which may not be so noticeable, but are still conditioned by the same trends, which help the inquirer, investigator, prosecutor and court to

properly exercise their powers, and the rights granted to non – government participants in criminal proceedings. Such, for example, is the imperative requirement that follows from the content of Part 9 of Article 166 of the Code of Criminal Procedure of the Russian Federation on the mandatory placement of a procedural act on the secrecy of personal data of a participant in an investigative action in a paper envelope (not in any acceptable packaging, namely in an envelope!) and the obligatory sealing of this envelope (not on ensuring the inviolability of its contents in any reliable way, namely, about its sealing!). Another example of the penetration of technical and technological rules of record-keeping into the criminal procedure legislation is an order addressed to a potential private prosecutor on the mandatory attachment of copies to the application for initiating a criminal case of a private prosecution to be served to alleged defendants (Part 6 of Article 318 of the Code of Criminal Procedure of the Russian Federation). This article is devoted to these problems.

Reasons for the legislative legalization of the rules of criminal procedure records management.

What are the main reasons for the gradual legislative legalization of technical and technological rules of criminal procedure records management? What influenced the emergence of such law-making tendencies?

It seems that it is not so difficult to answer these questions – the reasons for the incremental "legalizing" of the rules of criminal procedure records management, that is, their introduction into the "high" sphere of legislative regulation, are directly related to the circumstances that objectively affected the national system of public administration in general and criminal justice as one of the areas of implementation of state-government functions. Powers in particular. Moreover, the springboard for the emergence of such law-making tendencies was prepared 100 years ago, in the 1920s, which was actively promoted by two important factors inherent in the formation and further development of Soviet judicial and law enforcement agencies and the mechanisms of preliminary investigation and judicial proceedings of criminal cases under their jurisdiction.

I. One of them was expressed in a kind of administratization of criminal justice, in the assignment of jurisdictional and supervisory powers to executive authorities, including "law enforcement" agencies, in changing the traditional principles of organizing judicial, prosecutor's and investigative work, in adding administrative and bureaucratic forms and methods to the corresponding types of activities. This factor was caused by the revolutionary events of 1917, which predetermined a

change in the very paradigm of state power, which, in turn, could not but lead to the need for quite serious changes in the field of criminal justice.

It should not be forgotten that the model of socialist statehood stipulated by the program documents of the RSDLP(b), including the well-known slogan "All power to the Soviets!", did not presuppose the idea of separation of powers either in the classical understanding of European liberal enlighteners, or in the truncated form characteristic of the last decades of the Russian Empire-strongly limited by the canons of autocracy, but still characterized by relatively independent investigative, prosecutorial and judicial institutions (as they said at the time, institutions). Therefore, despite the general" conservative " desire of the Soviet government to ensure the continuity of the principles of organization and activity of the newly formed judicial and law enforcement agencies in relation to the sufficiently reliable, proven, efficient, and generally not contrary to the interests of the working people of the imperial justice system, its individual elements have undergone significant changes. And first of all, such changes affected the sphere of criminal proceedings - the mechanisms of preliminary investigation and trial of criminal cases could no longer fully comply with the pre-revolutionary canons based on the classical "Napoleonic" model, which assumes the differentiation of the functions of justice and preliminary investigation (investigation) and at the same time refers both functions to the jurisdiction of fairly independent representatives of the judiciary: justice - to the jurisdiction of the court, and preliminary investigation - to the jurisdiction of a special investigative judge (in the Russian Empire – a judicial investigator). Instead, in view of the rejection of the principle of separation of powers, the "revolution – born" Soviet courts, the prosecutor's office, and the investigative apparatus were quite naturally transferred to a single subordination of the relevant state administration body-the People's Commissariat of Justice (Narkomjust), and the criminal process itself began to be filled with administrative and bureaucratic forms and methods. In other words, people's judges, people's investigators, and public prosecutors have turned into classic officials and found themselves in the position of ordinary "cogs" in the growing state bureaucracy. And all subsequent, including cardinal, changes in the Soviet criminal justice system were, if not entirely reasonable, then at least quite natural and understandable.

As a result of such administrationization, investigative, prosecutorial and judicial activities have become characterized by a bureaucratic aura, a special "ministerial" climate and a peculiar bureaucratic mentality. Moreover, these symptoms were most clearly manifested in the organization and work of extra-judicial criminal justice bodies (preliminary investigation bodies and prosecutor's

offices). They became characterized by clear management verticals, strict hierarchy of powers, reverence, the ordered nature of the orders of their superiors; there were both written and unwritten duties to coordinate certain procedural acts with the management, approve relevant documents, etc. In the system and structure of prosecutor's and investigative bodies, main departments (departments), departments, divisions, etc. gradually emerged.

However, to a certain extent, these symptoms began to manifest themselves in judicial activity. It would seem that the Russian judicial system, which has long been removed from direct subordination to the executive branch and has been developing as an autonomous and independent state institution for almost 30 years, should have been completely freed from the administrative pattern typical of Soviet justice by now. But in reality, such an exemption did not happen: the courts still have the same "ministerial" climate, the same bureaucratic aura and official mentality. Last but not least, this is due to the established practice of forming a judicial corps – mainly consisting of former employees of the courts' offices, employees of the Judicial Department under the Supreme Court of the Russian Federation, or former employees of the same preliminary investigation bodies and the Prosecutor's Office.

In view of all the above circumstances, the trends associated with the "legalizing" of office management rules, with the incremental introduction of purely technical and technological regulations in the "high" sphere of criminal procedure regulation, no longer seem so strange and incomprehensible. After all, if a classic criminal justice official should be guided by the Law in his work, then the main "guide" for an ordinary official is a legal act of management, often representing the very instructions, the very administrative regulations. If the exercise of classical criminal procedure powers usually proceeds in conditions of discretion (the right to choose the most acceptable of the ways of behavior provided for by law) and is associated with the possibility of casual interpretation of the law, then the activity of a "ministerial" employee assumes a much more formalized character, and sometimes even characterized by a step-by-step algorithm. If classical investigators, prosecutors and judges are full-fledged subjects of law enforcement practice in the field of criminal justice, then the work of an ordinary official is often reduced to office work and document management.

II. Another factor that had a significant impact on the gradual penetration of technical and technological rules of office management into the" high " sphere of legislative regulation also emerged in the 1920s and also owes its appearance to the well-known circumstances accompanying the formation of Soviet statehood. It was caused by the lack of professional lawyers (judges, prosecutors, investigators),

primarily specialists of the "old school" who are able to competently perform their work, especially in the context of the post-revolutionary surge in crime. The need to overcome such a shortage of personnel as quickly as possible predetermined the adoption of very risky, but clearly forced and, apparently, no alternative anti-crisis measures – workers, soldiers, sailors, raznochintsy, etc. who did not have proper education and practical experience, but were ideologically loyal to the Soviet government, began to be accepted into the service of the justice authorities.[4]

Thus, the establishment of the Soviet criminal justice system was accompanied by an objective need to strengthen the guarantees of ensuring the legality, at least some correctness, of the work of officials of the preliminary investigation bodies, the prosecutor's office, and the court acting on behalf of the state, but not fully qualified and trained to participate in law enforcement practice. And in this regard, the first attempts to legalize the rules of criminal procedure records management and introduce purely technical and technological regulations in the "high" sphere of criminal procedure regulation once again cease to seem so strange and incomprehensible. By developing and" legitimizing "detailed algorithms for the implementation of judicial, prosecutorial, investigative, and investigative powers – those very "memos" - the state hoped to limit the degree of discretionary freedom and creative independence of illiterate law enforcement officers (such were the first Soviet servants of criminal justice), rather than minimize the likelihood of primitive errors that lead to actual meaninglessness or legal devaluation of the results legal actions taken or decisions taken. Moreover, these efforts were far from being in vain, but brought great benefits, since they made it possible to ensure a more or less tolerable practice of investigating and trying criminal cases in the conditions of the post-revolutionary personnel shortage with "little blood".

Reasons for strengthening the formalization of the rules of criminal procedure records management in the Code of Criminal Procedure of the Russian Federation.

So, the reasons for the emergence of law-making trends associated with the legislative legalization of technical and technological rules of criminal procedure records management seem quite understandable. It is also obvious that the factors that determined them have remained in the past, so at the present time they are unlikely to have a significant impact on law-making policy. Thus, the administratization of investigative, prosecutorial and judicial activities in general was completed during the Soviet period of criminal justice development; to date,

[4] For example, according to official statistics for 1921, only 17% of judges had higher legal education and 1% had other higher education. While the qualifications of 10% of judges were limited to secondary education and another 66% to primary education; the remaining 6% of judges had no education at all, that is, they were actually illiterate.

there are only numerous ongoing adjustments, for example, related to the establishment, reorganization or abolition of any state authorities performing criminal procedure functions, with more or less successful attempts to de-administrativeize individual cases. of these, primarily ships, etc. And the post-revolutionary personnel shortage, which was felt in the early 1920s, was generally overcome in the pre-war period. It was then that the system of legal education was established in the USSR; large centers for training lawyers were established; well-known scientific schools in the field of criminal law, criminal procedure, and criminalistics were formed; preliminary investigation bodies, prosecutor's offices, and courts began to be staffed with highly educated, experienced, and well-qualified employees who were able to properly manage their powers without any legislative restrictions "memos" and step-by-step instructions.

Thus, it is not entirely clear why by the time of the adoption of the Code of Criminal Procedure of the Russian Federation, these trends did not stop, but, on the contrary, entered the most active phase of their development. What can explain the sharp increase in the formalization of the rules of criminal procedure records management in the current criminal procedure legislation?

Asking such questions, it should be noted that the Code of Criminal Procedure of the Russian Federation has become an absolute "leader" in terms of the number of technical and technological rules, surpassing all its predecessors. Neither the Criminal Procedure Codes of the RSFSR of 1922 and 1923, nor the Criminal Procedure Code of 1960, which were already affected by these trends, were characterized by such large volumes of paperwork, especially requirements for the registration of judicial, investigative acts and other procedural documents.

Of course, it is possible to put forward a hypothesis that the authors of the Code of Criminal Procedure of the Russian Federation somewhat resembled their predecessors involved in the development of early Soviet criminal procedure legislation-they did not discount the new crisis of Russian statehood that broke out in the 1990s, which led to mass dismissals of experienced judges, prosecutors, and investigators, that is, However, this, without a doubt, turning point in the development of criminal justice still did not give rise to such devastating consequences as were once caused by the revolutionary events of the early twentieth century. Moreover, in recent years, the State has made great efforts to restore the former human resources of the criminal justice system. While the number of technical and technological rules introduced in the Code of Criminal Procedure of the Russian Federation, on the contrary, only increases. In particular, in 2009 the law was supplemented with an "instruction" on the execution of a pre-trial cooperation agreement (Article 317.3 of the Code of Criminal Procedure of

the Russian Federation), and in 2018 – a technical algorithm for removing digital information carriers or copying it to another medium (Article 164.1 of the Code of Criminal Procedure of the Russian Federation), etc.

In this connection, another hypothesis is more plausible. In all likelihood, the abundance of technical technological rules is another consequence of the well-known destructive circumstances that accompany the preparation and adoption of the Code of Criminal Procedure of the Russian Federation. Do not forget that the Code was prepared quite impulsively, in the context of fierce disputes and discussions, under strong pressure from "external forces", etc. At the same time, many of the "specialists" included in the relevant working group were clearly not ready to participate in such a complex and responsible project, did not know the subtleties of the theory of criminal procedure, did not have a proper law-making outlook, and did not have the skills to develop draft laws, especially codified regulations.

Of course, among the participants of this group were also prominent scientists who clearly understand the difference between the "high" purpose of the criminal procedure form and the rules of criminal procedure records management. However, it seems that they have become too much involved in the most "important" and fashionable issues of the development of Russian criminal justice (competition, rights of the accused, presumption of innocence, jury trial, etc.), without paying due attention to more "mundane" problems. As you know, this "menial" work was carried out by representatives of practical bodies who have exuberant energy, invaluable professional experience, are well-versed in the procedural bureaucracy, are able to defend and lobby for corporate interests, but at the same time do not bother to particularly immerse themselves in the subtleties of legal doctrine or generally consider the relevant knowledge superfluous and useless.

Conclusions

Based on the above, we can only hope that the Russian law-making policy in the foreseeable future will still be able to overcome the flaw considered, that is, to put an end to the clerical "boom" and begin to develop along a slightly different vector, which implies the gradual exclusion of technical and technological rules from the "high" sphere of legislative regulation. By the way, reducing the number of purely clerical norms will also reduce the need for constant changes and additions to the Code of Criminal Procedure of the Russian Federation, many of which are clearly technical or technological in nature.

The rules of record-keeping and document management cannot be identified with the "high" purpose of the criminal procedure form, the need for which is determined not by the legislator's intention to provide assistance in mastering applied skills in working with documents, but by the need to support investigative, judicial, and other procedural actions and decisions taken with proper legal (not office-keeping, but "high" legal!) guarantees of the intended results' quality. Therefore, the criminal procedure form does not need a subordinate law, but rather a legislative regulation, with complicated law-making mechanisms inherent in it and the highest legal force of the relevant normative acts.

Whereas the rules of criminal procedure record-keeping, on the contrary, do not imply any "high" purpose, but are aimed solely at optimizing law enforcement practice. Therefore, such rules have no place in the Criminal Procedure Code – they should be assimilated by professional law enforcement officers "with mother's milk", that is, in the process of forming an appropriate level of education, legal understanding, legal culture and other necessary personality traits of a modern lawyer. And if you do not understand the meaning of criminal procedure records management or lack basic skills in drawing up legally significant documents, you should not "chew" these questions in the text of the federal law, but think about the professional suitability of the relevant subject, about the expediency of his being in the public service and granting jurisdictional or supervisory powers in a criminal case. In other words, instead of turning the Code of Criminal Procedure of the Russian Federation into a "memo" for illiterate law enforcement officers, it is more reasonable to direct maximum efforts to conduct a more balanced personnel policy in relation to the judiciary, prosecutors, and officials of preliminary investigation bodies – to try to ensure that genuinely professional lawyers fill the relevant public positions. While it is more reasonable to devote educational and methodological literature to criminal procedure records management, and if necessary, some technical or technological rules can be explained in decisions of the Plenum of the Supreme Court of the Russian Federation and subordinate regulatory legal acts of a departmental nature issued in order to optimize law enforcement practice.

Conflict of Interests
The author declares no ethical issues or conflicts of interest in this research.
Ethical Standards
The author affirms this research did not involve human subjects.

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