

THE POWERS OF THE HEAD OF THE INVESTIGATIVE BODY AND THE PROSECUTOR AT THE END OF THE PRELIMINARY INVESTIGATION IN RUSSIAN CRIMINAL PROCEEDINGS

Cited as:

Ivanov, D., Moskovtseva, K., Potapov, V., Smeshkova, L., & Lucenko, E. (2024). The powers of the head of the investigative body and the prosecutor at the end of the preliminary investigation in russian criminal proceedings. *Revista Gestão & Tecnologia*, 24, 233–242. <https://doi.org/10.20397/2177-6652/2024.v24.2807>

Dmitriy A. Ivanov

Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation (MGIMO-University), Russia. Orcid id: <http://orcid.org/0000-0002-2023-3771> E-mail: dmitriy.a.ivanov@bk.ru

Kristina A. Moskovtseva

Moscow University of the Ministry of Internal Affairs of Russia named by V.Ya. Kikot, Russia. Orcid id: <http://orcid.org/0000-0003-0007-0351> E-mail: kristina.a.moskovtseva@mail.ru

Vasily D. Potapov

Federal State Budget Educational Institution of Higher Education “Pitirim Sorokin Syktyvkar State University” (SyktSU), Russia. Orcid id: <http://orcid.org/0000-0002-3150-088X> E-mail: v.d.potapov@mail.ru

Liliya V. Smeshkova

Novosibirsk State Technical University (NSTU), Russia. Orcid id: <http://orcid.org/0009-0006-8992-5537> E-mail: l.v.smeshkova@mail.ru

Elena P. Lucenko

Department of Legal Support of National Security, Russian Technological University – MIREA, Russia. Orcid id: <http://orcid.org/0009-0004-9531-0833> E-mail: elucenko@internet.ru

ABSTRACT

Objective: The article focuses on the division of authority between the head of the investigative body and the prosecutor during the final phase of the investigation process. This phase is critical, as it involves reviewing the investigation's findings, compiling procedural documents, and deciding the future of the case (whether it goes to court, is dismissed, or requires further action). There is significant academic debate surrounding the current power structure, which the article aims to address.

Materials and Methods: The authors employ a systematic scientific method to study the procedural, organizational, and managerial aspects of the powers of the investigative body head and the prosecutor. Analysis and synthesis methods are applied to identify issues in how these powers are exercised during the final phase of preliminary investigations. Additionally, statistical data on these practices are collected and evaluated to support the research.

Results and Discussion: The article highlights various outcomes at the end of preliminary investigations, including the preparation of indictments, rulings on compulsory measures, and

case dismissals. The authors discuss problems that arise due to inconsistencies in the roles of the investigative body head and the prosecutor. Using case law, they illustrate situations where procedural errors led to overturned verdicts, underscoring the need for clearer delineation of responsibilities. Key cases from Russian courts are used to emphasize the importance of careful coordination and scrutiny of criminal cases before they proceed to court.

Conclusions: The authors conclude that recent reforms have enhanced the role of the head of the investigative body, increasing their responsibility for decisions made by subordinate investigators. However, they express concern that some proposed reforms—such as transferring more powers from the prosecutor to the head of the investigative body—could lead to inefficiencies and imbalance in the criminal justice system. They recommend improving existing practices rather than enacting further legislative changes that could complicate the system.

Keywords: Head of an investigating body. Prosecutor. Closing stage of investigation. Indictment. State prosecution.

OS PODERES DO CHEFE DO ÓRGÃO DE INVESTIGAÇÃO E DO PROCURADOR NO FIM DA INVESTIGAÇÃO PRELIMINAR NOS PROCESSOS CRIMINAIS RUSSOS

RESUMO

Objetivo: O artigo foca na divisão de autoridade entre o chefe do órgão de investigação e o procurador durante a fase final do processo investigativo. Esta fase é crucial, pois envolve a revisão dos resultados da investigação, a compilação de documentos processuais e a decisão sobre o destino do caso (se será encaminhado ao tribunal, arquivado ou se requer mais ações). Há um debate acadêmico significativo em torno da estrutura atual de poder, que o artigo busca abordar.

Materiais e Métodos: Os autores utilizam um método científico sistemático para estudar os aspectos processuais, organizacionais e gerenciais dos poderes do chefe do órgão de investigação e do procurador. Métodos de análise e síntese são aplicados para identificar problemas no exercício desses poderes durante a fase final das investigações preliminares. Além disso, dados estatísticos sobre essas práticas são coletados e avaliados para apoiar a pesquisa.

Análise dos Resultados: O artigo destaca vários desfechos no final das investigações preliminares, incluindo a elaboração de denúncias, decisões sobre medidas compulsórias e arquivamento de casos. Os autores discutem os problemas que surgem devido a inconsistências nos papéis do chefe do órgão de investigação e do procurador. Usando jurisprudência, eles ilustram situações em que erros processuais levaram à anulação de veredictos, sublinhando a necessidade de uma divisão mais clara de responsabilidades. Casos importantes dos tribunais russos são usados para enfatizar a importância da coordenação e análise cuidadosa dos casos criminais antes de serem levados a julgamento.

Conclusões: Os autores concluem que as reformas recentes aumentaram o papel do chefe do órgão de investigação, ampliando sua responsabilidade pelas decisões tomadas pelos

investigadores subordinados. No entanto, expressam preocupação de que algumas reformas propostas—como a transferência de mais poderes do procurador para o chefe do órgão de investigação—possam causar ineficiências e desequilíbrios no sistema de justiça criminal. Eles recomendam melhorar as práticas existentes, em vez de realizar mudanças legislativas adicionais que possam complicar o sistema.

Palavras-chave: Chefe do órgão de investigação. Procurador. Etapa final da investigação. Acusação formal. Acusação pública.

Editor Científico: José Edson Lara
Organização Comitê Científico
Double Blind Review pelo SEER/OJS
Recebido em 14.02.2024
Aprovado em 25.04.2024

INTRODUCTION

In the present conditions of ongoing reform of the criminal procedure system much attention is focused on the "competition" of powers of the head of the investigative body and the prosecutor, including in the academic environment arises considerable controversy about the powers of these participants of the criminal proceedings at the final stage of the investigation.

This stage involves the performance of substantial work in terms of volume and tasks aimed at summarising the results of the criminal investigation, drawing up the necessary procedural documents which reflect the content of the investigator's final conclusions. The stage of completion of a preliminary investigation bears a weighty role in summing up the work of an investigator with a criminal case which is reflected in making a decision on its further fate.

The goal of this study was to explore the most interesting proposals for amending the criminal procedure law concerning the finalization of preliminary investigations and the subsequent transfer of criminal cases to court.

MATERIALS AND METHODS

As the main method in the process of writing this research article the authors used general scientific systematic method of knowledge, which allowed for a comprehensive review and full analysis of controversial issues concerning the powers of the head of the investigative body and the prosecutor at the end of the preliminary investigation in the criminal process of Russia.

The method of systematic approach allowed to consider organizational, procedural and managerial aspects of a number of the most important powers of the head of the investigative body and the prosecutor at the end of the preliminary investigation in the criminal process of the Russian Federation.

Application of methods of analysis and synthesis allowed to identify existing problems in the exercise by the head of the investigative body and the prosecutor of a number of powers at the stage of completion of the preliminary investigation in the criminal process of the Russian Federation.

Statistical method included the collection and analysis of information on the implementation by the head of the investigative body and the prosecutor of some of the most important powers at the stage of completion of the preliminary investigation.

As a result of the above methodology, the authors obtained new knowledge on relevant aspects of the activities of the head of the investigative body and the prosecutor at the stage of completion of the preliminary investigation in the criminal proceedings of the Russian Federation.

RESULTS ANALYSIS

The preliminary investigation may be terminated by drawing up an indictment (act, ruling); issuing a ruling to send the criminal case to court for the application of compulsory medical measures; issuing a ruling to terminate the criminal case.

Chapter 30 of the Code of Criminal Procedure (State Duma of the Federal Assembly of the Russian Federation, 2001) regulates the submission of the criminal case to the prosecutor with an indictment.

This stage begins with the investigator drawing up a report informing the accused of the end of the investigative measures in the criminal case, during which the accused, defence counsel and the accused's legal representative are explained their right to familiarise themselves with the materials of the criminal case. The investigator also notifies the victim, civil plaintiff and civil defendant and their representatives. This procedural document is preceded by a thought activity of an investigator, in which he assesses the collected material of the criminal case, completeness, comprehensiveness and objectivity of the evidence, and on the basis of internal conviction that all necessary investigative actions have been performed and the collected evidence is sufficient to draw up an indictment, he decides on the transition to the final stage of preliminary investigation (Nguyen et al., 2021).

Familiarization of participants who have such right with the criminal case file aims at ensuring the rights and legitimate interests of persons involved in the proceedings (Pushkarev et al. 2021, p. 396). After familiarization with the criminal case file participants form their own position supported by arguments contained in the criminal case file. Naturally, the position of the victim, the accused, as a rule, will not coincide, that is why also at this stage it is possible to speak about the implementation of the adversarial principle.

When getting acquainted with the materials of the criminal case, participants may find controversial, in their opinion, moments in the content of procedural documents, or pay attention to mistakes made during their drafting. Therefore, by exercising the right to file motions, the parties defend their position. But it is worth noting that it is not always the case that the parties discover disputes or errors in a procedural document that constitute grounds for filing a petition. They may not declare their claims at this stage and leave it until the trial, where they will certainly exercise the right envisaged by law.

Thus, the Supreme Court of the Republic of Sakha (Yakutia) considered the appeal of convict A., advocate Ivanov N.N. against the judgment of the Ust-Aldan District Court of the RS (Yakutia) in case no. 22-1337, which found that the text of the judgment in this case was fully identical to that of the indictment, which contained both procedural and non-procedural errors. Accordingly, the judgment had been drawn up with obvious violations of the law of criminal procedure, namely Article 297 of the RF CCRP and Article 307 of the RF CCRP. Moreover, the indictment was also drawn up in violation of the law of criminal procedure and had stylistic errors. Following consideration of the complaint, the court ordered that the judgment of the Ust-Aldan District Court of the Republic of Sakha (Yakutia) of 26 June 2017 against A. - to be quashed and the criminal case remitted for a new judicial examination (Supreme Court of the Republic of Sakha (Yakutia), 2017).

This case study demonstrates several disadvantages. Firstly, it is certainly a fact that it is inadmissible for the court to completely transfer the content of the evidence from the indictment to the verdict. This fact is indicated by the Resolution of the Plenum of the Supreme Court of the RF of 29.11.2016 No. 55 "On the court verdict" (Plenum of the Supreme Court of the Russian Federation, 2016). Secondly, the existence of errors in the indictment, which were not identified either during the coordination with the head of the investigative body, or during the approval of the indictment by the prosecutor (Pushkarev et al., 2019, p. 7951). It is possible that there was bad faith on the part of the supervisors, who, in view of similar procedures, apparently relied on each other's good faith when agreeing and approving the indictment. We

may assume that the convict and his defence counsel identified these mistakes already at the stage of familiarisation with the materials of the criminal case, but did not file a motion to that effect. As a result, the court verdict was overturned. This once again demonstrates the importance of complying with all the rules established by criminal procedure law for the preparation of the indictment and its subsequent approval and ratification. At the same time, this example demonstrates one of the most urgent problems at the present time, which is the redistribution of powers between the head of the investigative body and the prosecutor. And in view of the sufficiently negative judicial practice, among others, proponents of continuing the reform suggest more and more changes to the legislation to solve one problem or another.

The academic community continues to debate the transfer of certain powers from the head of the investigative body back to the prosecutor, or vice versa, in continuation of the trend of the reform initiated, from the prosecutor to the head of the investigative body.

According to U. V. Sadiokova (2020), among the "most significant" is the proposal to transfer to the head of an investigative body the right to approve the indictment with further referral of a criminal case to court.

This position seems to us rather controversial. On the one hand, we can agree with its proponents that the approval of the indictment by the head of the investigative body would at least be logical due to the fact that in the framework of procedural control the approval of the indictment would be the final and quite reasonable confirmation of all procedural activities of the head of the investigative body in relation to the specific criminal case investigated by the investigator subordinate to him.

On the other hand, the head of the investigative body actually has the power to "approve" the indictment by coordinating its further transfer with the criminal case to the prosecutor.

But in our view, this is where the big problem lies. Thus, the head of the investigative body, having received the indictment from the investigator, must carry out painstaking work in examining it. It is the head of the investigative body at this stage checks all the data indicated in the indictment with the materials of the criminal case, whether the evidentiary basis is presented sufficiently and in full, whether the characteristic material of the accused is correctly reflected, whether the circumstances mitigating and aggravating punishment are taken into account. The prosecutor also scrutinises the technical aspects, such as the presence of the necessary signatures, the numbering, the correctness of the sheets of the criminal case, and the correctness of the writing.

Based on the results of the review, the supervisor decides whether to give consent or to return the criminal file to the investigator in order to correct the deficiencies.

The importance of this consent is also demonstrated by the fact that in the absence of an appropriate consent note, the prosecutor has the right to return the criminal case file. In addition, the consent of the head of the investigative body indicates his support for the decision taken by the investigator and confirms its lawfulness and well-foundedness.

The importance of this power of the head of the investigative body is obvious and in our view it is somewhat analogous to the approval of the indictment by the prosecutor. Of course, the outcome of the respective activities of the authorised persons will be quite different: thus, after obtaining the consent of the head of the investigative body, the criminal case with the indictment is transferred to the prosecutor, while the prosecutor, having approved the indictment, transfers it with the criminal case to the court. However, the prosecutor, when reviewing the incoming criminal case with the indictment, also focuses on the same aspects as the head of the investigative body, which may result in either the approval of the indictment or the return of the criminal case to the investigator.

Thus, the prosecutor, when returning the criminal case to the investigator, points to shortcomings, primarily in the procedural control of the head of the investigative body, as the latter, having given his consent to the investigator, confirmed the legality and validity of his decision, the sufficiency of the evidence collected and the absence of any errors. At the same time, the responsibility for the returned criminal case would fall "on the shoulders" of the investigator. On this basis justifiably operate proponents of transferring the right to approve the indictment to the head of the investigative body (Sadiokova, 2020). If the legislator supports this proposal, the procedural independence of the investigator will increase, since the head of an investigative body in case of return of a criminal case already from the court will share responsibility with the investigator. This is undoubtedly true, but in the present realities the head of the investigative body also appears to be a person of responsibility, having the right to agree the indictment. In addition, during the entire period of investigation of the criminal case within the framework of procedural control he checks the materials of the criminal case, gives consent to investigative actions in urgent cases, to initiate a petition to the court on the election, cancellation, change of preventive measure, on another procedural action that is allowed by a court decision, etc., which confirms the agreement and "approval" of the head of the investigative body of all actions of the investigator in the criminal investigation. Therefore, the issue of "appropriateness" can rather be solved by reviewing the existing practice of distribution of responsibility, the system of statistical reporting, than by giving the head of the investigative body another authority.

Or, for example, the judge of the Ermakovsky District Court of Krasnoyarsk Territory, having considered criminal case No. 1-63/2018 initiated under Part 4 of Article 159 of the Criminal Code against the accused V., decided to return the criminal case to the prosecutor to remove obstacles to its consideration in court. During the trial, the court found substantial violations of the criminal procedure law, which constituted an obstacle to further proceedings. Naturally, the judge attached considerable weight to the lawfulness of the indictment. It transpired that the bill of indictment had been drawn up by an investigator who had not taken over the case, i.e. there was no relevant document in the criminal case file confirming that the case had been taken over by that investigator and that he had been able to carry out the necessary investigative and procedural steps. At the same time, the court also found that there was no criminal case number in the indictment (Ermakovsky District Court of Krasnoyarsk Territory, 2018).

This example shows the importance of literacy and diligence of competent persons in drafting procedural documents and also demonstrates the fact that when there are two supervisory bodies represented by the head of the investigative body and the prosecutor, these mistakes were still made.

Absolutely rightly note the role of indictment for criminal proceedings I. A. Nasonova and Y. V. Burov (2008), calling it a decisive procedural document for further movement of a criminal case, which summarizes the results of the entire preliminary investigation. Thus the prosecutor, acting as a public prosecutor in court, is guided by the provisions set out in the indictment. A competently drafted indictment facilitates the process of familiarisation of the court and the prosecutor with the materials of the criminal case.

Meanwhile, here is another example of mistakes made by both control and supervisory bodies. Thus, in 2021, during the appeal hearing, the court of the Khanty-Mansi Autonomous Okrug - Ugra quashed the verdict and the criminal case was returned to the prosecutor due to the absence of a stamp of approval by the head of the investigative body on the indictment. The court referred to paragraph 14 of Resolution No. 28 of the Plenum of the Supreme Court of 22 December 2009 "On the application by the courts of the norms of criminal procedural law governing the preparation of a criminal case for trial", according to which the absence of approval of an indictment by the head of an investigative body was an obstacle to considering the merits of a criminal case and passing a lawful judgment (Nagornaya, 2021).

Based on such practical errors, some scientists have proposed to eliminate the existing scheme of agreement and approval of the indictment and give the right to approve the indictment and submit the public prosecution in court to the head of the investigative body

(Sadiokova, 2020). From the position of the authors of this proposal looks quite logical in view of subjective factors. Thus, the head of an investigative body, exercising procedural control over the activities of an investigator in the course of proceedings on a criminal case, summarizes by approving the indictment, firstly. And secondly, the head of the investigative body, who is the immediate supervisor of the investigator, is already familiar with all the nuances of the criminal case by the time it is sent to court, which can significantly reduce the time of familiarisation with the criminal case file in preparation for court proceedings.

But in our view, this would change the entire existing criminal justice model. The introduction of such legislative changes will entail a succession of further reforms as the prosecution function of the prosecutor will also be abolished. Obviously, with the acquisition of the function of public prosecution in court and criminal prosecution in criminal proceedings, the balance of the entire pre-trial process would be disturbed. This would significantly affect the protection of the rights of suspects and defendants. If they lodge a complaint with the prosecutor's office, in view of its changed role, there may be a violation of the prosecutor's office's decisions on the outcome of the relevant complaints.

The confusion of the functions of the head of the investigative body will also significantly limit the investigator's procedural independence, which is largely based on the possibility of appealing against relevant instructions and decisions with which the investigator disagrees. Maybe we should follow the advice of O.V. Michurina (2021) and stop endlessly reforming the law of criminal procedure.

CONCLUSIONS

In summary, we note that an undoubtedly positive aspect of the ongoing reform is a tendency to increase the role and authority of the head of the investigative body in line with the idea of the initiated reform, which entails increasing responsibility for the decisions made by subordinate investigators, as well as by them themselves. However, some of the ideas of changing the legislation seem absurd from the point of view of the fact that they will entail a lot of further forced innovations in an already overworked criminal procedure system.

REFERENCES

Ermakovsky District Court of Krasnoyarsk Territory. (2018). Judgment of District Court Judge No. 1-63/2018 2-991/2015 of 24 July 2018 in case No. 1-63/2018. <https://sudact.ru/regular/doc/dRBGFjRtawx/> (accessed on March 29, 2023).

- Michurina, O. V. (2021). Normative model of enquiry through the prism of changes in the CPC of the Russian Federation. *Laws of Russia*, 6, 38-41.
- Nagornaya, M. (2021, February 25). Iz-za otsutstviya podpisn nachal'nika sledstvennogo organa v obvinitel'nom zaklyuchenii apellyatsiya vernula delo prokuroru [Due to the lack of signature of the head of the investigative body in the indictment, the appeal returned the case to the prosecutor]. *Advokatskaya gazeta*. <https://www.advgazeta.ru/novosti/iz-za-otsutstviya-podpisi-nachalnika-sledstvennogo-organa-v-obvinitelnom-zaklyuchenii-apellyatsiya-vernula-delo-prokuroru/>
- Nasonova, I. A., & Burov, Y. V. (2008). Criminal and procedural significance of ending a preliminary investigation with drawing up an indictment. *Bulletin of the Voronezh Institute of the Ministry of Internal Affairs of Russia*, 1, 51-55.
- Nguyen, V. T., Pushkarev, V. V., Tokareva, E. V., Makeev, A. V., & Shepeleva, O. R. (2021). Compensation for damage caused by a crime in the Socialist Republic of Vietnam and the Russian Federation. *Jurnal Cita Hukum*, 9(2), 211-220. <https://doi.org/10.15408/jch.v9i2.21738>
- Plenum of the Supreme Court of the Russian Federation. (2016). Resolution of the Plenum of the Supreme Court of the Russian Federation of 29 November 2016 No. 55 "On judicial verdict". <https://vsrf.ru/documents/own/8528/> (accessed on March 29, 2023).
- Pushkarev, V. V., Fadeev, P. V., Khmelev, S. A., Nguyen, V. T., Trishkina, E. A., & Tsviliy-Buklanova, A. A. (2019). Crimes in the Military-Industrial Complex (MIC). *International Journal of Recent Technology and Engineering*, 8(3), 7950-7952. <https://doi.org/10.35940/ijrte.C6635.098319>
- Pushkarev, V. V., Poselskaya, L. N., Skachko, A. V., Tarasov, A. V., & Mutaliev, L. S. (2021). Criminal prosecution of persons who have committed crimes in the banking sector. *Cuestiones Políticas*, 39(69), 395-406. <https://doi.org/10.46398/cuestpol.3969.25>
- Sadiokova, U. V. (2020). On expanding the powers of the head of an investigative body at the stage of completion of a preliminary investigation. *Proceedings of the Management Academy of the Ministry of Internal Affairs of Russia*, 2(54), 110-114.
- State Duma of the Federal Assembly of the Russian Federation. (2001). Code of Criminal Procedure of the Russian Federation μ December 18, 2001 No. 174-FZ (as amended on December 25, 2023). *Sobranie Zakonodatel'stva Rossiiskoi Federatsii [SZ RF]* [Collection of Legislation of the RF] 24.12.2001, No. 52 (Part 1), Item 4921.
- Supreme Court of the Republic of Sakha (Yakutia). (2017). Appeal Decision of 31 August 2017 No. 22-1337/2017 in case No. 22-1337/2017. https://vs-jak.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=36640198&delo_id=4&new=4&text_number=1 (accessed on March 29, 2023).