

## SCTCMG 2019

### International Scientific Conference «Social and Cultural Transformations in the Context of Modern Globalism»

#### LEGAL STATUS OF INITIAL STAGE OF CRIMINAL PROCEEDINGS IN RUSSIAN CRIMINAL LEGISLATION

Yaroslava Ryapolova (a)\*, Viktoriya Strukova (b)

\*Corresponding author

(a) South-West State University, 94, 50 years of October str., Kursk, Russia  
yaroslava@mail.ru, tel. +74712222459

(b) South-West State University, 94, 50 years of October str., Kursk, Russia  
wstrukova@yandex.ru, tel. +74712222459

#### *Abstract*

The article deals with the initial stage of criminal proceedings and its significance for the Russian criminal process. The authors analyze arguments of scholars and practitioners. On the basis of historical and foreign experience, they put forward an idea about abolishing the initial stage of criminal procedures. The authors identified current tasks of initiation of a criminal case, assessed positive and negative consequences of the reform of pre-trial proceedings and abolition of the initial stage of criminal proceedings. The authors concluded that at the initial stage, there are specific procedural forms, procedural coercion, a limited circle of participants, a special subject, and special means of criminal procedural proof. At the same time, procedural forms of investigative and other procedural actions conducted at the preliminary investigation stage are not adjusted to the initial stage of criminal proceedings. It is necessary to determine legal and factual grounds for initiating a criminal case regardless of the criminal procedure established by the Russian legislator.

© 2019 Published by Future Academy [www.FutureAcademy.org.UK](http://www.FutureAcademy.org.UK)

**Keywords:** Initiation, criminal proceedings, stage, pre-trial, verification.



## 1. Introduction

The institute of initiation of a criminal case has undergone numerous modifications and passed a long historical path in Russian and foreign legislation. Being the initial stage of pre-trial proceedings in the Russian criminal process, this stage has concentrated major theoretical and applied problems related to the principles, forms and structure of criminal procedure.

When discussing the draft of a new Criminal Procedure Code of Russia, the idea about the need to abolish the stage of initiation of a criminal case, its non-procedural nature, incompatibility with procedural evidence, etc., became widespread. The Code of Criminal Procedure adopted in 2001 served as a fertile ground for development of such views, since the procedural form of crime report verification is simplified.

Since then, the Russian legislator has made many attempts to modify the initial stage in the search of optimal variants: since July 1, 2002 (the Code of Criminal Procedure of the Russian Federation entered into force), ten key articles of section 7 “Criminal proceedings” of the Code of Criminal Procedure of the Russian Federation have been amended more than 50 times. This indicates a great desire of the legislator to preserve the initial stage, make procedures more efficient, meet the needs of modern law enforcement practice and account for achievements of scientific doctrine.

While criminal procedure science presumes independence of the initial stage (Malysheva, 2008; DeMuniz, 2004), some authors (Khalikov, 2006; Derishev, 2003) believe that this stage should be abolished as it has a negative impact on criminal investigation which results in distortion of forensic statistics. Proponents of this reform often refer to the Charters of Criminal Proceedings of 1864 which did not single out the initiation of criminal proceedings as an independent stage. Sometimes the authors appeal to foreign experience: in the adversary and mixed continental systems, criminal proceedings (France, Germany, Belgium, Austria, Finland, Luxembourg, etc.) do not know this stage (Golovko, 2011). The reforms of the Criminal Procedure Codes of Ukraine and Kazakhstan (Akhpanov, Sabitov, & Shaykhadenov, 2018; Sultanov, 2016) provide additional arguments: since these countries abolished the initiation stage, it’s time for Russia to do it.

## 2. Problem Statement

The amendments to Article 144 of the Code of Criminal Procedure of the Russian Federation adopted by Federal Law No. 23-FZ of March 4, 2013 actualized discussion on the initial stage of criminal proceedings. The Criminal Procedure Code of the Russian Federation contains an expanded set of procedural means of preliminary verification of a crime report. The investigator, the inquiry body and the head of the investigative body have the right to receive explanations, samples for comparative research, request and withdraw documents and objects, schedule a forensic examination, take part in a forensic examination, request expert opinions, examine documents and items. Thus, the boundary between the two stages of pre-trial proceedings is erased, verification of a crime report became similar to full-fledged preliminary investigation (or “quasi-investigation”) with an impressive array of law-enforcement, investigative and other procedural actions aimed at collecting evidence. There is an urgent need to determine the range of contemporary tasks at the initiation stage, assess positive and negative consequences of the reform of pre-trial proceedings.

### **3. Research Questions**

The research subject is norms of the Russian and foreign legislation regulating the initial stage of criminal procedures, theoretical provisions revealing contemporary tasks, prospects for improving the initial stage as well as law enforcement practice.

### **4. Purpose of the Study**

The aim of the research is to study significance of the initial stage for the modern Russian criminal procedure on the basis of theoretical approaches to the concept and criteria evaluating effectiveness of legislative regulation of the initial stage.

### **5. Research Methods**

The methods used by the authors are as follows: dialectics, historical, comparative, and logical methods, legal modeling.

### **6. Findings**

Criminal proceedings require primary verification of crime reports in order to determine whether they contain information about crimes or offenses that do not require criminal proceedings. This stage does not depend on recognition or non-recognition of the initiation of criminal proceedings as an independent stage of the process (Voskobitova, 2014). There are categories that cannot be abolished, that is, they are outside the legal field: identification and recording of crimes, identification of persons suspected of committing crimes, etc. (Kolokolov, 2014).

The issue of the initial stage of criminal procedures depends on what the state gives priority to: administrative or procedural procedure at this stage of responding to a crime report. L.V. Golovko argues that the administrative mode of responding to crime reports is typical of the adversary system (Golovko, 2011). The procedural mode is more typical of mixed criminal systems based on the public nature of criminal procedures.

This pattern explains differences in the legal regulation of the initial stage of pre-trial proceedings in foreign countries where there is no procedure of case initiation but there are legal activities constituting the initial stage (Kapranov, 2005).

In contrast to some researchers who appeal to “European standards” which lack an independent initial stage of criminal proceedings, it is fair to say that the legislation of European countries is not uniform. Thus, the current and reformed legislation of some former socialist countries of Europe characterized by a desire to distance themselves from the previous canons of public administration, preserves the initial stage of criminal procedures (inquiries) and obligatory verification of reported crimes (Szyprowski, 2007). Czech Criminal Procedure Code (Frystak, 2010), codes of Slovakia and the countries of former Yugoslavia provide for the pre-investigation stage - before the pre-trial investigation. The need to initiate pre-trial proceedings is determined by the desire to eliminate violations of citizens' rights and assess whether the

transition to the next, more costly and intrusive, stage of preliminary investigation is needed (Litvishko & Volevodz, 2014).

The main and initial task of the criminal procedure remains unchanged. At the initial stage, the crime is differentiated from other offenses. It is necessary to establish a set of factual circumstances that indicate the criminal nature of behavior which gives grounds to launch an investigation. This should be considered as a legal guarantee against unreasonable involvement of the person in criminal proceedings at subsequent stages. In this context, the initial stage is an integral boundary between preliminary verification of signs of criminal behavior and investigation including the use of procedural measures of coercion (Khimicheva, 2003). At the initial stage, the procedural activities have specific procedural forms for performing procedural actions, limited procedural coercion, a limited circle of participants, a special subject, and special means of criminal procedural proof.

If the initial stage is abolished, a filter that discards information about actions that do not contain evidence of a crime will disappear. It is equally important for ensuring rights and legitimate interests of citizens and preventing violations of the law.

The absence of a special decision to initiate a criminal case can have a negative impact on the duration of the investigation, reasonableness of investigative measures. It will be difficult for the victim to control the course of investigation.

If the check is transferred to the administrative regime outside the criminal process, there will be a threat to the check quality. The evidence requiring urgent investigative measures and professionalism of investigators can be lost.

Currently, Russian criminal procedure science has to eliminate existing gaps at the initial stage of criminal procedures. The analysis of legislative changes has shown that the reform of the initial stage is not consistent; it is not characterized by consistent redistribution of powers between the investigator, the prosecutor, and the head of the investigative body; there are no coordinated means of preliminary verification of information on crime signs (Andreeva, 2012); procedural forms of investigative and other procedural actions conducted at the preliminary investigation stage are not adjusted to the initial stage of criminal proceedings taking into account its features, tasks, and range of participants. The issues of law enforcement remain unsolved. There are regular violations of rights and legitimate interests of citizens involved in criminal proceedings.

## **7. Conclusion**

Abolition of the initial stage of criminal proceedings according to the principle “no stage-no problems” will be a significant irreplaceable loss rather than a benefit. The procedural form of criminal prosecution initiation (pre-investigative verification of information on a crime) is of particular importance as a guarantee against unlawful and unjustified suspicion or accusation, a guarantee of protection of rights of victims ensuring the very possibility of detecting a crime and ensuring correct application of criminal law. The legal status of the initial stage depends on implementation of effective measures aimed at optimizing legislative regulation of criminal proceedings.

## References

- Akhpanov, A., Sabitov, S., & Shaykhadenov, R. (2018). Criminal pre-trial proceedings in the Republic of Kazakhstan: Trend of the institutional transformations. *Opción*, 34(85), 107–125.
- Andreeva, O. I. (2012). On the need for initiating a criminal case in the modern criminal process of Russia. *Bulleting of Tomsk State University Bulletin*, 356, 109–112.
- DeMuniz, P. J. (2004). Judicial reform in Russia: Russia looks to the past to create a new adversarial system of criminal justice. *Willamette J. Int'l L. & Dis. Res.*, 11, 81.
- Derishev, Y. (2003). Stage of initiation of a criminal case as a relic of “socialist legality”. *Russian justice*, 8, 34.
- Frystak, M. (2010). Pre-Trial Proceedings in the Czech Republic. *Jurisprudencija*, 3.
- Golovko, L. V. (2011). Kazakhstan: De-Sovietization of the Criminal Procedure. Refusal to initiate a criminal case. *Criminal proceedings*, 4, 10–13.
- Kapranov, A. V. (2005). *Optimization of the stage of initiation of a criminal case: Thesis*. Rostov-on-Don.
- Khalikov, A. N. (2006). Issues of pre-trial optimization. *Russian Justice*, 9, 50.
- Khimicheva, G. P. (2003). *Pretrial criminal proceedings: A concept for improving criminal procedure*. Moscow: Ekzamen.
- Kolokolov, N. A. (2014). Initiation of a criminal case: to preserve, transform, or abolish? *Library of the criminologist*, 1, 87–109.
- Litvishko, P. A., & Volevodz, A. G. (2014). The stage of initiation of pre-trial proceedings under the laws of some European countries. *Library of the criminologist*, 1, 134–136.
- Malysheva, O. A. (2008). *Criminal case initiation: theory and practice: Monograph*. Moscow: Lawyer.
- Sultanov, N. (2016). The Procedural Model of Criminal Prosecution in the Modern Criminal Procedure Legislation of the Republic of Kazakhstan. *Journal of Advanced Research in Law and Economics*, 5(19), 1179–1186.
- Szyprowski, B. (2007). Postępowanie sprawdzające w procesie karnym. *Prokuratura i Prawo*, 7–8, 159–180.
- Voskobitova, L. A. (2014). Criminal case initiation: problems and prospects. *Library of the criminologist*, 1, 59.