



## COMPARATIVE ANALYSIS OF THE INITIAL STAGE OF THE CRIMINAL PROCESS IN SOME FOREIGN COUNTRIES

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### Annotation

This article discusses the organization of the initial stage of criminal proceedings in certain foreign countries. A brief analysis of the forms of criminal prosecution is carried out. The author comes to the conclusion that its purpose fully depends on the initial stage of the criminal process and the fate of the received statement or message about the crimes being prepared or committed is decided, and the right organization can act as a guarantor of ensuring the rights of the individual in the criminal process and perform a protective function against unjustified and illegal criminal prosecution.

**Keywords:** criminal process, criminal case, the stage of initiation of criminal proceedings, current problems, criminal procedural norms, refusal to initiate criminal proceedings.

### Introduction

In world practice, the problem of improving the criminal process is often associated with the issue of improving the effectiveness of law enforcement agencies at various stages of criminal proceedings. Starting from the moment of registration of reports or statements about crimes, they need to be thoroughly checked in order to avoid illegal initiation of criminal proceedings with criminal prosecution, which can contribute to reducing crime. According to the latest statistical materials of the European Commission, the rate of recorded crimes in most of the European countries tends to increase [1].

The study of the information material of the Coordinating Council of Prosecutors General of the CIS member States shows an increase in registered crimes in countries such as Russia, Armenia, Belarus, Azerbaijan, Tajikistan by 1.7%. However, in some countries, this indicator remains average and has even decreased. The reason for the decrease in the indicator is indicated by a change in the calculation methodology (Kazakhstan, Kyrgyzstan, Moldova), as well as the procedure for registering reports and statements about crimes [2].

Studies have shown that in most countries more and more attention is being paid to





scientific research aimed at finding legal solutions to improve the initial stage of criminal proceedings. The issues of developing mechanisms for receiving, registering, resolving reports and statements about crimes, determining the legal status of participants in legal relations arising at the stage of inspections, ensuring their rights to appeal procedural actions (omissions), as well as decisions taken at the stage of initiating criminal cases are relevant.

The analyses of statistical data and materials of judicial and investigative bodies has shown frequent mistakes when initiating criminal cases and when they are refused, which leads to frequent cancellations of decisions made by officials. We believe that the reason for this is the lack of a unified procedure for registering, verifying and authorizing received statements about crimes, as well as their regulation through various internal acts.

From the analysis of the best practices of foreign countries, it can be concluded that there is a gradual reorganization or complete abolition of the stage of initiation of criminal proceedings, including the refusal to initiate criminal proceedings [3].

It is worth noting that the existence of the institution of criminal proceedings in the law of certain states is associated with the established model of the criminal law of the country. Having conducted a study of existing models of criminal procedure legislation of foreign countries, we have determined the application of this institution in some CIS countries, while European countries and the United States do not apply it. Instead of the abolished institution of "initiation of criminal proceedings", jurisdictions apply the institution of criminal prosecution, similar to the institution of initiation of criminal proceedings. The institution of criminal prosecution does not include a pre-investigation check and requires an immediate response by law enforcement agencies with the receipt of reports or statements about a crime.

According to the current Code of Criminal Procedure of the Republic of Uzbekistan, the receipt of statements and reports on crimes is the basis for conducting a pre-investigation check, according to the results of which a procedural decision is made. When a criminal case is initiated, a resolution is issued on this and on the adoption of a criminal case for its production. If a criminal case is refused, a notification is sent to the prosecutor and the person who reported the crime.

The German criminal procedure uses the institution of criminal prosecution instead of the institution of criminal proceedings. A distinctive feature of criminal prosecution is that it begins immediately after the receipt of a report or statement about a crime according to article 158 of the CPC.

The reforms carried out in the criminal procedure legislation of Germany indicate that to this day the principle of legality "Legalitätsprinzip" remains one of the basic





principles of criminal proceedings. This principle obliges the Prosecutor's office and the police to immediately begin investigating criminal acts upon suspicion of their commission [4]. There are other principles in the German criminal process, such as "Offizialprinzip" [5], according to which criminal prosecution falls within the competence of law enforcement agencies, which is similar to the initiation of a criminal case (prosecution) on public charges. However, a detailed analysis of the norms of the German Criminal Procedure Code showed that there are torts whose prosecution is conditioned by the presence of a statement (petition) for criminal prosecution or the authority to prosecute or the requirements of criminal prosecution. That is, criminal prosecution is carried out on the basis of both private and public-private charges. In addition, in the case of a private prosecution, the prosecutor's office makes a public accusation according to Section 376 of the Criminal Procedure Code of Germany, only if there is a public interest [6].

Another principle of German criminal procedure is "Ermittlungsgrundsatz", according to which, in certain categories of criminal cases, criminal prosecution is carried out by a court or an investigative body, regardless of applications or petitions. This principle in the legal literature of Germany is often called the instructive or inquisitive principle "Instruktions-oder Inquisitionsmaxime" [7].

Analysis of the norms of the Criminal Procedure Code of Germany shows that the moment of initiation of criminal prosecution for the accused is important, with his involvement in the case, his status is determined and thereby he acquires procedural rights inherent in the accused. According to the Criminal Procedure Code of Germany, the accused, within the limits of his procedural rights, may not testify against himself and immediately exercise the right to professional protection, which is very similar to national legal proceedings [8]. In addition, only after acquiring the status of the accused, measures of procedural coercion are applied to this person.

It should be mentioned that according to part 2 of Article 220 of the Criminal Procedure Code of the Republic of Uzbekistan, detention can be carried out until a criminal case is initiated, in order to promptly suppress criminal actions of a person.

A distinctive feature of the criminal procedure legislation of the Federal Republic of Germany is the absence of criminal proceedings. However, Section 397 (paragraph 1) of the German Tax Code contains a very interesting definition, according to which a criminal case is considered open from the moment when a financial department, police, prosecutor's office or criminal court applies a measure that is clearly aimed at convicting someone of committing a (tax) criminal act. Thus, in this context, neither the will to prosecute nor any formal action (e.g. drawing up a criminal case file, assigning a



registration number to the case, etc.). Such a procedure proves the absence of a pre-investigation check in the German criminal process.

German criminal proceedings have a feature according to which a law enforcement agency cannot proceed with criminal prosecution if there are no factual grounds for suspicion. If there are such grounds, a criminal case (prosecution) is initiated in the usual manner, even if there are only a small part of the signs of a crime. However, even if we recognize the existence of a pre-investigation check in the form of an inquiry, as it was in the history of our criminal proceedings, it can only be carried out within the framework provided for in criminal procedure law, with special attention to the proportionality of the measures applied. According to the general principles of German criminal procedure, a preliminary investigation should not necessarily be directed against a certain person whose personal data has been established. In addition, a criminal case (prosecution) may also be initiated/initiated against an "unknown person" [9].

Under French law, the "initiation of criminal prosecution" is equated with the initiation of a "public lawsuit", since the prosecutor is a public defence figure, one might say a kind of public advocate. Only the prosecutor can demand the start of a preliminary investigation in cases of misconduct, in this category of offenses, a preliminary investigation is not a mandatory stage. In relation to crimes, on the contrary, the preliminary investigation is a mandatory stage, but it also begins with the decision of the prosecutor. The first stage of the criminal process in France is the initiation of a criminal case, defined as a procedural action by which a party performs its public functions [10].

In addition, since 2018, a project on digitalization of criminal records management has been launched in France, including the reception of applications and reports of crimes [11].

The main objective of this approach is to increase the effectiveness of the criminal justice system by modernizing it by eliminating paper and handwritten signatures, starting with the filing of a complaint and ending with the execution of a sentence, as well as bringing the justice system closer to citizens by improving information about the results of the complaint.

Another project related to the modernization of the procedure for dealing with statements and reports of crimes is the online complaint. "Online complaints" has been introduced into the French criminal process since 2019, which has secured the opportunity for victims of crimes to file complaints via the Internet. The online complaint actually covers two separate services depending on the needs of the victim and the needs of the criminal investigation:





– An online service for receiving reports of serious or especially serious crimes that require personal support of the victim, as well as assistance in finding out by investigators. In this case, an interactive discussion platform for contacting a police officer or gendarme allows you to clarify and qualify the facts before referring the victim before filing a complaint to a police station or gendarmerie brigade or to support the relevant structure;

– An automated online service for filing complaints of minor offenses, and the main interest for the victim is to quickly receive a notification (receipt) about filing a complaint in order to initiate care and compensation procedures (insurer, employer, etc.) [12].

Having analysed the Criminal Procedure Code of France, the following pre-trial stages of criminal proceedings are distinguished:

- 1) Inquiry;
- 2) Initiation of criminal prosecution;
- 3) Preliminary investigation.

Preliminary investigation in France is carried out at the pre-trial stage of the criminal process, where the preliminary investigation determines the signs of a crime. As a rule, evidence in a criminal case is collected at a preliminary investigation, with the help of investigative and other procedural actions. The regional prosecutor and the investigating judge are charged with the duties of supervision and control over the pre-trial stage, and the criminal police officer who conducts the preliminary investigation notifies the prosecutor of the republic as soon as a person is identified against whom there is evidence indicating that he committed or attempted to commit a crime [13].

In accordance with the norms of the Criminal Procedure Code of France, a preliminary investigation is carried out in the form of an inquiry, which has two forms – general and special. As a general rule, "general inquiry" is used in the investigation of crimes related to the category of less serious, and "special" – to more serious. The prosecutor who received all the materials of the criminal case as a result of the investigation decides his future fate [14]. Based on a comparative analysis of German and French criminal proceedings, we have come to the conclusion that the institution of criminal proceedings is similar in both countries. It is noteworthy that in France there is a dematerialization of criminal records management, including the procedure for receiving and registering reports and statements about crimes, misdemeanours and offenses.

For comparative analysis in the course of the study, we also studied the experience of the CIS countries. The results of the study showed that in all CIS countries the





institution of criminal proceedings existed initially, as they are representatives of the system of Romano-Germanic law. It should be noted that in recent years this institution has undergone major reforms. So, for example, in the criminal process of Russia, the initiation of a criminal case is carried out on private, private-public and public charges in accordance with 146-147 of the Criminal Procedure Code of the Russian Federation [15]. In the criminal procedure of the Republic of Azerbaijan, a criminal case is initiated in accordance with the provisions of articles 204-213 of the CPC [16].

In general, the procedural mechanism for initiating a criminal case in the criminal proceedings of the Russian Federation and the Republic of Azerbaijan has similar characteristics to national criminal proceedings.

In the Republic of Kazakhstan, statements and reports on crimes are registered in the unified register of crimes, after which they are distributed according to the rules of investigation [17]. In the Criminal Procedure Code of the Republic of Kazakhstan, you can notice the definition of "initiation of a criminal case", but the procedural mechanism is fundamentally different from ours. Since after registration in the unified register of crimes, criminal prosecution begins in the form of a simplified inquiry, which has characteristic features with a pre-investigation check existing in the national criminal process. In the absence of signs of crimes, the inquiry is terminated under Article 35 of the Criminal Procedure Code of the Republic of Kazakhstan. The criminal procedure of the Ukrainian Republic has a similar practice. The "Unified Register of Pre-trial Investigations" is also fixed in the Criminal Procedure Code of Ukraine [18]. After registration of messages and statements, a pre-trial investigation is carried out in the form of an inquiry according to the rules provided for in articles 214-313 of the Criminal Procedure Code of Ukraine.

## **Conclusion**

The study of the genesis of the institution of criminal proceedings in some countries of the world allowed us to conclude that it has passed a significant historical path. The institution under study was formed in most countries of the Romano-Germanic system of law, and it did not exist at all in the Anglo-Saxon one. Nevertheless, the issue of the prospects for the existence of a criminal case as an institution in criminal procedure law remains in the focus of attention. We believe that at the moment we cannot completely abandon this institution, since it is also connected with other institutions that generally form the system of criminal procedure law.





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