

Comparative legal research of the Institute of indictment under the legislation of Russia and foreign countries

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Abstract. The indictment institute and strongly was included long ago into legal system of our country as the final document. Need and importance of this document was repeatedly discussed by scientific community. This article reveals the attempt to research the criminal procedural legislation of foreign countries in the context of the institute of the indictment. In addition, the detailed survey of the indictment institute in Russian Soviet Federative Socialist Republic is included in the article.

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Introduction

For a long time in the science of the procedural criminal law, the indictment has been assigned the role of the final document closing the preliminary investigation. According to the public prosecutors survey, the trend was revealed, unfortunately, showing that 60% of the public prosecutors do not read criminal case in whole, and in order to prepare the indictment they use abstracts from the before approved indictments. [1] This fact once more underlines the importance and extensionality of the under research topic. Analyzing the indictments of the European court of Human rights one can find the support of such opinions. For example, in the context of article 13 of the Convention for the protection of Human Rights and Fundamental Freedoms [2], in “Hudaerov against Russia” case [3] great attention had been paid to the significance of indictment as the final document concluding preliminary investigation.

Analysis of foreign countries’ legislation in terms of the Institute of indictment is of particular interest since international treaties and agreements play a great role in Russia’s legislation system and in human rights and freedoms protection. D.Mitrani stated that human and citizen’s rights would take a status of more protected only in case when their protection in court would be controlled by civil society and by international court system [4, 5].

The first case to use the term Indictment in Russian criminal procedure took a place in the Code of Criminal Procedure of Russian Soviet Federative Socialist Republic in 1922[6]. Art.213 Code of Criminal Procedure of Russian Soviet Federative Socialist Republic stated, “After the addendum of investigation...the investigator starts drafting the indictment”. Art. 214 Code of Criminal Procedure of Russian Soviet Federative Socialist Republic specified that the indictment include descriptive and

operative parts. The descriptive part of indictment included statement of facts of the case with reference to evidences proving investigator’s conclusions about the necessity of prosecution of the accused person. The operative part of the indictment consisted of accused person’s name, second name and surname, nickname if was, age, criminal record if was etc. Code of Criminal Procedure of Russian Soviet Federative Socialist Republic also specified that indictment’s operational part should also state which criminal law in particular should be applied to this exact crime.

In Code of Criminal Procedure of Russian Soviet Federative Socialist Republic in 1960 [7] the Institute of indictment was reflected in Art.205 but for all that was not strongly amended in Art. 214 RSFSR CPP in 1922.

At present, the Institute of Indictment is reflected in Art.220 CPP of Russian Federation (RF). Compared to CPP RSFSR in 1922 and CPP RSFSR in 1960, the current CPP RF in the context of indictment is not divided to descriptive and operative parts. At the same time, it reveals the core of indictment, but does not provide its definition. Back to that time in order to bridge this gap a proposal had been introduced to enlarge Art.5 CPP RF with the new paragraph 22.1: “Indictment is the final preliminary investigation procedural document containing the criminal case indictment defining the limits of trial as well as system and analysis of evidence and focusing procedural decision of the competent authorities and officials about the possibility of sending the criminal case on the merits in court” [8, 9]. Unfortunately, the Law does not implement this proposal as for now. Analyzing various points of view of scientists about an indictment role in the sphere of criminal trial, that the specified procedural document represents huge value both for criminal trial as a whole, and for a stage of

completion of pretrial investigation in particular is represented obvious [10].

In order to study the evolution of the development of the institute of indictment in modern worldwide criminal justice, authors attempted to analyze this entity in the criminal-procedure legislation in several CIS and foreign countries.

Code of Criminal Procedure of the Republic of Belarus [11] introduced a similar to indictment document, titled "The resolution to transfer the criminal case to the prosecutor for the referral to the court" which in accordance with Art. 260 Code of Criminal Procedure of the Republic of Belarus makes the investigator after ensuring compliance to requirements of Articles 255-259 Code of Criminal Procedure of the Republic of Belarus. The resolution of the criminal case referral to court indicates time and place of passing the resolution, who issues this resolution, accused person's information, which socially dangerous act or acts had been committed by the accused person under the criminal law, resolution should also specify the exact paragraph, part and article which provides the responsibility under the exact criminal law. The resolution should be concluded by the investigator's and the body of inquiry's decision to refer the criminal case to the prosecutor and court.

Authors would like to highlight the difference of Code of Criminal Procedure of the Russian Federation and Code of Criminal Procedure of the Republic of Belarus in connection with the translation option of the document that finalizes preliminary investigation. Thus according to part 2 art.266 of Code of Criminal Procedure of the Republic of Belarus translation of the document in order to be understandable to the accused person, should be fulfilled by the prosecutor or his assistant. Considering this document there is another difference in art. 264 of Code of Criminal Procedure of the Republic of Belarus stating that the prosecutor or his assistant within 5 days, or in complicated multi-segmented criminal cases within 15 days should adopt the decision on the criminal case to be referred to court. Whereas Code of Criminal Procedure of the Russian Federation stipulates in this case 10 days period.[12]

The Code of Criminal Procedure of the Republic of Azerbaijan [13] interprets the bill of indictment to be the document concluding preliminary investigation. Yet the legislator reveals the indictment's content, consisting of introductory, descriptive, motivational and operational parts. Indictment's introductory part indicates the date, place and time of indictment's drafting start, name, second name, surname, title of the investigator who prepares the indictment; general information about

the criminal case according to which the indictment is fulfilled.

Descriptive and motivation part of the indictment include: place and time of crime commission, its methods and motives, its effects and other relevant circumstances; evidences confirming the guilt of the accused person; reasons given by the accused in his defense, and evidence gathered during the test of these arguments; circumstances characterizing the accused person; circumstances characterizing the victim; circumstances aggravating and mitigating liability of the accused person. The resolution part of the indictment provides information about the accused person and the charges against him indicating the article of the certain criminal law.

The Code of Criminal Procedure of the Republic of Uzbekistan [14] is of particular interest in context of the institute of the indictment: the legislator has provided very important provision, in authors view, introducing the rules to apply security measures to the parties of criminal proceedings. In many countries, this rule is not introduced. It is widely known that the part of resistance to organized crime is to protect participants of criminal proceedings from the outside pressure.

The Code of Criminal Procedure of the Republic of Uzbekistan establishes among its principles the protection of rights and freedoms of its citizens. At the same time, this principle is entirely implemented in the institute of indictment. For instance, according to Art. 380 The Code of Criminal Procedure of the Republic of Uzbekistan the investigator encloses to the indictment a list of persons to be summoned to the court. The investigator indicates in this list their location and list of files which reflect their evidence and conclusions. In order to ensure the safety of victims and witnesses and other participants in the list of persons to be summoned to the court, their aliases can be indicated instead of their names. Detailed data on persons needed to be under security measures, should be submitted to the court under the seal together with an introductory section protocols of investigative actions conducted with their participation. They can only be examined by the prosecutor, claiming the indictment, and by the trial judge.

The above-stated research leads to the conclusion that the peculiarities of legal regulation of the institution of the indictment in the criminal law of foreign countries are expressed in :

- the document title;
- In terms of regulatory approval;
- adjustment of the document structure;
- in the presence or absence of security measures to protect lives, health and property of the criminal proceedings parties;

• in an adversarial legal model for determining the limits of the charges.

The authors accomplished a comprehensive study of the Institute of the indictment in several CIS and foreign countries. At the same time it should be noted that, unlike in analyzed countries there is no institute of indictment in French law, but only the «laconic ruling to provide the indictment chamber to transfer the accused person to the trial.»

Comparative legal analysis of the institution of the indictment in CIS and foreign countries showed a differentiated approach to the form of the investigation completion and to the form of drafting the indictment.

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