

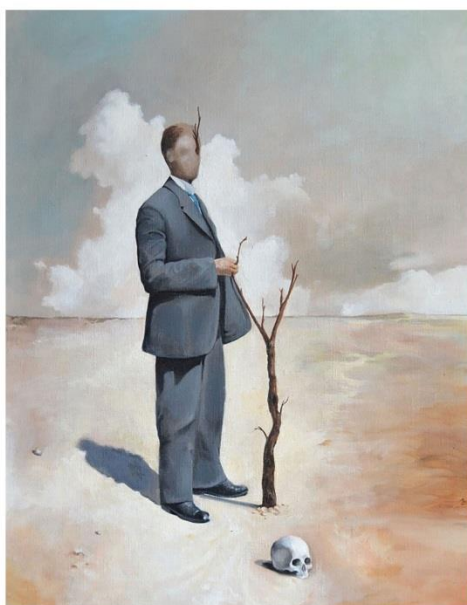
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Universidad del Zulia
Facultad Experimental de Ciencias
Departamento de Ciencias Humanas
Maracaibo - Venezuela

Investigation reform in Russia in the second half of the 19th century

**Larisa L. Solovyova, Roman R. Palekha, Valery P. Kanishchev,
Nikolay Yu. Andreev**

The Russian State University of Justice

E-mail: paleharr@mail.ru

Abstract

The research objective is to study the reform of court investigators' institutions in the central regions of Russia in the second half of the 19th century. The methodological basis of the study is the dialectical method universal in legal science. As a result, most of the shortcomings occurred in the process of applying the rules of regulating the competence of the police and judicial investigators during the preliminary investigation. In conclusion, the institute of judicial investigators itself underwent fundamental changes, and since the late 1880s, the era of counter-reforms began.

Keywords: Court investigator, criminal procedure, judicial.

Reforma de Investigación en Rusia en la Segunda Mitad del Siglo Diecinueve

Resumen

El objetivo de la investigación es estudiar la reforma de las instituciones de investigadores judiciales en las regiones centrales de Rusia en la segunda mitad del siglo XIX. La base metodológica del estudio es el método dialéctico universal en ciencias jurídicas. Como resultado, la mayoría de las deficiencias se produjeron en el proceso de aplicación de las normas de regulación de la competencia de los investigadores policiales y judiciales durante la investigación

preliminar. En conclusión, el propio instituto de investigadores judiciales experimentó cambios fundamentales y, desde fines de la década de 1880, comenzó la era de las contrarreformas.

Palabras clave: investigador judicial, procedimiento penal, judicial.

1. INTRODUCTION

At the turn of the 20th-21st centuries, Russia, whose history is especially rich in radical upheavals and abrupt transitions from one quality state to another, was astonished to discover the half-forgotten pages of national history. These gave the Russian citizens instructive lessons – there are other means, methods, and ways of improving state and public institutions, which are based on transformation, change, reorganization, in other words, on reforms. This circumstance calls for a new, thoughtful reading of the great reforms' history of the second half of the 19th century. The specificity of these transformations is quite similar to the exquisite reformatory efforts of modern power structures and institutions. The end of the 20th – beginning of the 21st century convincingly emphasized the immutability of historical dogmas and traditions.

Modern pre-trial proceedings in the Russian criminal process have their undoubted advantages but, unfortunately, are not without flaws and require further improvement. As more than a hundred years ago, the unsatisfactory state of this stage of the criminal process has the same roots: the low level of investigators' qualifications, the

imperfection of the criminal procedure legislation in this area, the prosperity of legalized formalism in the activities of investigators, and much more.

For more than a century, legal scholars and practitioners in this field have not been able to agree on the procedural independence and the independence of investigators (DANEVSKY, 2003; DERISHEV, 2004; GOLOVACHEV, 1872; KVACHEVSKY, 1866; LINOVSKY, 2001; SOLOVYEVA, 2007; SOLOVYEVA & FUMM, 2007). Due to these circumstances, the position of the modern investigator remains practically unchanged at present.

Thus, the problem of modifying the domestic investigative apparatus and the preliminary investigation at the present stage requires not only taking into account the historical past, but demands a careful, thoughtful, in-depth reading of the reform of pre-trial proceedings, which was carried out in the second half of the nineteenth century.

The research objective is to study the specifics of the investigative reform of the institute of judicial investigators in some central governorates of the Russian Empire in the second half of the 19th century and to substantiate the nature, content, structure, role and status of this institution in public life in these governorates.

To achieve the study objective, it is necessary:

- to show the genuine state of the activities of judicial investigators in some central governorates of Russia in the post-reform period;

- to study the specific activity of the newly created Institute of judicial investigators in some central governorates of the Russian Empire of the second half of the 19th century;
- to identify the advantages and disadvantages of the investigative practice of judicial investigators, as well as determining the organizational and procedural problems that these bodies faced in carrying out their immediate functions in the post-reform period in some governorates of Central Russia (SOROKINA, 1994).

2. MATERIALS AND METHODS

The methodological basis of the study is the dialectical method universal in legal science. The historical and legal principles made it possible to understand the very essence of the institution of judicial investigators' reform in connection with the specific historical conditions. Other general scientific methods of cognition were also used: analytical, systemic, structural-functional, and statistical. The material presented in the study has a problem-chronological sequence, and the analysis of legislation and legal institutions of that time is carried out in accordance with the formal legal principle.

3. RESULTS AND DISCUSSION

The research results are:

1. In accordance with the new legislation, the inquiry was left to the police, yet the exact boundaries where the inquiry ends and the investigation begins were not delineated by law.

2. The vague framework of the procedural position of the judicial investigator elevated them to the rank of an intermediate link in the overall structure of the criminal process.

3. As the investigative practice at the local level showed, in some central governorates of the Russian Empire, the activities of the judicial investigators during the preliminary investigation did not meet the increased professional requirements for the professional level of workers who carried out the preliminary investigation, and the new progressive legislation often went against the real investigative practice.

Until 1860, the efficiency of state administration was determined through the desire of the supreme power to strengthen the role of not only central government bodies but also local authorities. State authorities were in charge of managing institutions, exercising control and supervision, and concerning the subjects, they were limited to the functions of the so-called police state. A series of social reforms was to rectify the current situation. Thus, on June 6, 1860, Emperor Alexander II approved three regulatory acts:

Establishment of Judicial Investigators (EJI) (SATR. - F. 2. - I. 82. - C. 98. - P. 74, 81);

Order to Judicial Investigators (OJI) (SATR. - F. 2. - I. 82. - C. 97. - P. 75-80; SATR. - F. 2. - I. 82. - C. 98. - P. 78);

Order of the Police on Investigation into Accidents which may contain a crime or offense (SATR. - F. 2. - I. 82. - C. 98. - P. 77).

The opposite situation was in Tambov Governorate. Of the 448 investigated criminal cases (1872-1882), most often the preliminary investigation was carried out in the following categories of crimes: arson; suicide; murder and attempted murder; poisoning; forgeries; rape; crimes against faith; illegal logging; false denunciation; thefts and robberies; resisting; fraud; official misconduct; insulting the Emperor; beatings. The largest number of criminal cases with the preliminary investigation was arson - 174 proceedings; for murder and attempted murder, there were 24. For rape, there were 21 proceedings; 15 for crimes against the faith; 13 in total for thefts and robberies; and 12 for beatings. For resisting, there were 9 proceedings, and for other crimes, such as false denunciation, perjury, fraud, illegal logging and insulting the Emperor, a small number of proceedings were performed compared to the abovementioned figures. The statistics of categories of criminal offenses were collected on the basis of the materials of specific criminal cases under investigation.

Second, due to the Peasant Reform of 1861 (which freed the peasants from serfdom) and the later destruction of class courts in accordance with the Judicial Reform of 1864, all criminal cases, regardless of classes, became subject to the general court. Accordingly, the preliminary investigation in all criminal cases was the competence of the institute of judicial investigators, re-introduced under the legislation.

Only an official could cope with such an influx of criminal cases and conduct a preliminary investigation competently, in accordance with the law. Such official was to have the experience of legal practice in this field, good knowledge and proper application of the law. Judicial investigators recorded all their criminal proceedings in the special Gazette about the activities of the judicial investigator. An example here is the Statement of the activities of the judicial investigator of the 1st station of the Temnikovsky uyezd of Tambov district court for May 1884 (Table 1) (SATR. - F. 69. - I. 15. - C.6. - P. 1).

Table 1: Abstract of the Statement of the activities of the judicial investigator of the 1st station of the Temnikovsky uyezd of Tambov district court for May 1884

12	Remains to the 1st day of May
6	Received again
1	Returned for further investigation
4	By 478, 479, 1103 and 1204 Art. SCJ
1	By 353 Art. SCJ
4	By 277 Art. SCJ
-	By 482 and 290 Art. SCJ
9	Total
10	Remains by the 1st day of June
Fulfilled cases arose in 1884	Opened (of the number of cases remaining by the 1st day of June)
10	Total
9	Individual requirements fulfilled during the reporting month
5	Fulfilled (remaining to the 1st day of June)

Table 1 reveals that the general information in this statement included not only the statistics of unfinished, reopened and returned for further investigation cases for one month but also the criminal

proceedings included in the competence of the judicial investigators: examination, the procedure for preliminary investigations of crimes committed outside the judicial investigator's section, the resolution of jurisdiction issues, the protocol on the termination of the investigation and the transfer of proceedings to prosecutors, etc.

Judicial investigators separately compiled special Reports on unfinished criminal investigation. It must be said that the figures in this document clearly showed the quality of the work of the above-mentioned judicial institution. Depending on the number of unfinished legal investigations, it was possible to speak about the satisfactory or unsatisfactory work of this institution. An example is the statistics of unfinished criminal investigations according to judicial investigators' reports from eight stations in Oryol governorate for 1867, 1869, 1872, and 1877 (Table 2).

Table 2: Statistics of unfinished criminal investigations according to judicial investigators reports from eight stations in Oryol governorate

		Unfinished criminal investigations			
		In 1867 (SAOR. F. 714. I.1. C.6. P. 5)	In 1869	In 1872 (SAOR. F. 714. I.1. - C. 11. - P.23)	In 1877 (SAOR. F. 714. I.1. - C.28. - P.7)
Stations	in Oryol governorate				

Judicial investigator of the 1st station of the city of Oryol	31	18	12	12
Judicial investigator of the 2nd station of the city of Oryol	28	13	24	14
Judicial investigator of the 1st station of the Orlovsky uyezd	23	12	44	90
Judicial investigator of the 1st station of the Mtsensky uyezd	56	16	27	6
Judicial investigator of the 2nd station of the Mtsensky uyezd	51	18	10	2
Judicial investigator of the 1st station of the Karachaevsky uyezd	80	165	6	12
Judicial investigator of the 2nd station of the Karachaevsky uyezd	157	51	8	17
Judicial investigator of the 1st station of the Bryansky uyezd	78	228	30	2

The data in Table 2 indicate that the attitude of the judicial investigators towards their work was ambiguous, and accordingly, the problem of unfinished criminal investigations was solved differently: in one case, there is a tendency to decrease the unfinished criminal cases (the desire and vigorous activity of the judicial investigator to eliminate deficiencies in their work correctly from the legal point of view); in another case, to the increase of such cases (inaction, neglect of duties).

In the first years of practical activity of judicial investigators in the field, many problems arose from the lack of uniform rules for filling in various statements about the work performed and reporting documents. To eliminate the problem, on November 11, 1871, the Rules for the Transformation of Judicial Reporting in Criminal Cases (Rules on the conversion...). Later, on November 22, 1872, a special Highest Approved Addendum was issued (The Highest Approved...), which clearly set out the rules of reporting by all the law enforcement officials (including judicial investigators) to the Ministry of Justice.

Later, the Department of the Ministry of Justice forwarded a special circular to all the governorates of the Russian Empire, which pointed out the shortcomings and frequently encountered mistakes made by individuals in the judiciary reports on their activities.

1. ... Meanwhile, up to the present, some judicial investigators ... in the section under the heading Proceedings at the judicial investigator enter not the name of the crime clarified by the investigation, but the one by which the investigator knew the crime at

the time of the start of the investigation... Breaking this rule gives the Ministry of Justice considerable difficulty in categorizing crimes into groups ... (SAOR. - F. 714. - I. 1. - C.21. - P. 5).

2. The statistical division of the Department of the Ministry of Justice was sometimes overwhelmed by the fact that the statements on the proceedings ... did not have any number at all, or the number of the initial case notice was incorrectly indicated, and in some cases, it was not noted at all whether anyone sent such notice. One judicial investigator was so careless about the duty assigned to him by law that about 100 statements sent by him in various cases were presented under the same random number ... (SAOR. - F. 714. - I. 1. - C.21. - P. 5).

3. ... Some judicial investigators sometimes do not deliver initial or brief notices at all or do not include those in the case files. Such omissions, harmful to the information on the total number of crimes, cause a very lengthy and unnecessarily aggravating correspondence of the Department on the delivery of proceedings notices ... (SAOR. - F. 714. - I. 1. - C.21. - P. 5).

Sometimes, the cases returned by the Prosecution Supervision to the investigators for supplementing the investigation are shown in the time-based information of the judicial places as separate cases, while such additional investigative actions need not be considered as new cases ... (SAOR. - F. 714. - I. 1. - C.21. - P. 6).

In conclusion, we consider it necessary to point out that the correct delivery of statistics, which is important not only for the

development of criminal statistics but also for monitoring the speed and success of the administration of justice, provides the Ministry of Justice with one of the most essential means for evaluating the activities of each judicial authority (SAOR. - F. 714. - I. 1. - C.21. - P. 7).

Thus, the practice of implementing the investigative reform, in particular, in the central governorates of Russia in the second half of the nineteenth century showed that the desirable and legislatively enshrined organizational and procedural-criminal model of the preliminary investigation soon turned into organizational and procedural problems in the activities of judicial investigators in the post-reform period.

Trying to change the current situation, the departments of the Ministry of Justice issued special legal acts, which in essence were acts of interpretation of the law. For the most part, thanks to these acts alone, the judicial investigators carried out their immediate procedural activities.

4. CONCLUSION

Thus, already in the first years of implementing the investigative reform, due to the small accumulated experience in the practice of judicial investigators in some central governorates many shortcomings of the criminal procedure legislation (on which the government placed

great hopes in its time) were identified. The problems that the judicial investigators faced in conducting the preliminary investigation were for the most part organizational and procedural:

a) The new law did not clearly regulate the competence of the police (as an inquiry body) and judicial investigators;

b) The issue of providing judicial investigators not only with salary but also with such important things as payment for housing and with transportation was not fully resolved;

c) A large obstacle in the preliminary investigation was the uneven distribution of the investigation sites among the officials, which often led to the inaction of investigators in areas with a small population and, conversely, to excessive overload of investigators in areas with a large number of inhabitants;

d) The cause of the unsatisfactory work of the judicial investigators was legalized formalism, which judicial investigators had to adhere to when compiling protocols, definitions, various registries, case inventories, etc. No investigative action could proceed if not recorded in writing;

e) The legislation did not provide clear rules on who (the police or judicial investigators) is obliged to conduct identification investigations related to the following population category: vagrants, fugitives, the passportless, etc.;

f) Problems related to regulating the communication of judicial investigators with other officials of the judiciary;

g) Problems related to the procedure for the following investigative actions: detention, inspection, seizure, etc.;

h) Problems related to the procedure for summoning a detainee for interrogation by a judicial investigator, etc.

In just a few years, most of the rules governing the criminal procedure of judicial investigators were revised. The institute of judicial investigators itself underwent fundamental changes, and since the late 1880s, the era of counter-reforms began.

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