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Investigatory Errors

Alexander D. Nazarov*

Siberian Federal University

79 Svobodny, Krasnoyarsk, 660041 Russia¹

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The article is devoted to the analysis of some significant definitions connected with investigatory error concept. After critical consideration of some scientists', lawyers' position on the matter the author suggests the definition of investigatory errors, gives their basic (essential) classification.

Keywords: an investigatory error, gaps of preliminary investigation, essential criminal – procedural infringements.

Point

Danger of errors made in criminal legal proceedings by the subjects conducting criminal proceedings is obvious.

Errors at corresponding stages of criminal proceeding are made by officials: inquiry bodies (an error of an investigator and the head of an inquiry agency); investigatory departments (an error of an investigator and the head of an investigatory body); Offices of Public Prosecutor (errors of a public prosecutor and persons equal to the public prosecutor's status).

All given errors conditionally could be named **investigatory errors** for convenience.

Errors made by the court (judge) in criminal cases at pre-trial, trial, and execution of the sentence stages are accepted to name **judicial error**.

Example

As our researches results show, in overwhelming majority of cases the judge's

error is predetermined by an initial error of an investigator, an inspector which the heads of inquiry, investigatory agencies, the public prosecutor «have overlooked» (have not noticed).

In criminal proceeding an error can take place at making procedural decisions and during proceeding. Errors can also be in mental activity for example, at estimating proofs collected on the case. But such errors, not being objectively expressed in decisions accepted on criminal case and during proceedings, have no legal sense.

In scientific literature and in practical activities of criminal justice bodies for designation of preliminary investigation errors the set of terms is used: «preliminary investigation omissions», «preliminary investigation gaps», «drawbacks of preliminary investigation», «investigatory errors», «legality infringements», «infringements of law norms» (procedural, material), including – «essential infringements...», «criminal-procedural offences», «deviations from norms of the law»,

* Corresponding author E-mail address: anazarov16@mail.ru

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«procedural errors of preliminary investigation», «an inspector's error» etc. Undoubtedly, all these concepts are ambiguous. In criminal -procedural legislation the term «an investigatory error» is not used. However, in criminal – procedural science concept «an investigatory error», despite its conditionality, has proved its right to existence.

In the course of preliminary investigation various investigatory errors are committed: in application of material, procedural legislation, other errors (wrong application of tactical recommendations of criminalistics, psychology, victimology, expertology, etc.

Specific kind of investigatory errors are errors committed by an inspector not in pre-judicial stages but at investigation of new or newly revealed circumstances (article 413, article 419 the Criminal Procedural Code of Russian Federation). During such investigation interrogations, examinations, expertise, seizure and other necessary investigatory actions can be made.

In historical retrospect a small group of scientists in criminal – procedural science apply the definition of concept an investigatory and a judicial error fundamentally (Kudrjavitsev, 1975; Bojkov, 1988, 1990; Voskresensky, 1991).

The authors' group of scientists in procedural law of the Research Institute of the General Public Prosecutor's Office of Russian Federation defined a concept «investigatory errors» in the following way:

Investigatory errors are «illegal and unreasonable actions of an inspector on bringing citizens to criminal liability and imprisonment, suspension, termination, transfer an indictment to the public prosecutor for submission criminal cases in court which on erroneous representation of the inspector were lawful and allegedly have been aimed at criminal legal proceedings tasks provision» (Voskresensky, 1991). V.I.Vlasov considered, that investigatory errors «are any

unintentional violations of the law, drawbacks and omissions committed at criminal proceeding instituting, any abnormality in procedural activity, including mental process of a competent person, the bearer of corresponding rights and duties» (Vlasov, 1988).

We consider the approach in question quite disputable. The definition given above does not include, for example, deliberate, but not criminal infringements of laws by an inspector that finally leads to investigatory errors too. At the same time it is impossible to understand by an error «abnormality... in mental process of a competent person» as it is impossible to reveal mental process inaccuracy until it is not reflected in a concrete action of an official and in a corresponding procedural decision.

A.D. Bojkov by an investigatory error understood «any illegal or unreasonable decision caused by wrong action or omission» (Bojkov, 1988). He considered serious procedural infringements made quite consciously, and wrong application of the criminal law, which illegality and groundlessness is ascertained by a corresponding official or body to be errors. Indications on such error's signs (each independently) as «illegality» and «groundlessness» of a decision are of significance as allows to distinguish errors according to the character of their formation and establish the way of their correction precisely. Along with concept «investigatory errors» the term «procedural errors» is used in similar situations.

A.M. Baranov by procedural error in preliminary investigation understood «unintentional infringement of procedural law expressed in default or inadequate execution of its requirements by an inspector or other procedural body and recognised as such by a competent subject in a corresponding legal act» (Baranov, 1996).

Undoubtedly, concept of an investigatory error is wider, rather than concept of procedural error connected only with infringements of procedural law. Besides, A. M. Baranov did not recognise deliberate infringements of the law as errors. We support the idea that deliberate, conscious actions or inertia of an inspector if they are not criminal and, according to an inspector, are aimed at achievement of criminal legal proceedings goals could be referred to errors.

A.T.Dugin believed, that «lawful is such a criminal – procedural action which is made by an investigation body in due time, with sufficient grounds available and in an order established by norms of criminal and criminal – procedural law irrespective of the result received». That is A.T.Dugin, under condition of legitimacy of criminal – procedural action of an inspector, admitted possibility of his unconscious making investigatory errors, an honest mistake which we undoubtedly agree to. A.T. Dugin put the following sense into concept «criminal – procedural offence: «... it is encroaching on criminal -procedural order by a socially dangerous or harmful guilty action committed contrary to requirements of criminal and criminal – legal procedural rules without sufficient grounds or untimely, or with non-observance of the established order, and equally illegal omission when there were sufficient grounds to perform necessary procedural actions» (Dugin, 1995).

We believe that A.T. Dugin without using concept of investigatory errors, nevertheless had them in mind when included infringement of Criminal Procedural code, Criminal code norms, gaps of preliminary investigation committed by the inspector by negligence, inexperience, self-confidence into the a spectrum of criminal – procedural offences. At the same time A.T. Dugin also included an investigator's criminal actions into criminal-procedural offences concept which

as noted above cannot be considered investigatory errors.

Terms «investigatory, judicial error» have firmly rooted in legal lexis, designating cases of condemnation of innocent persons, imposition of unfair punishment, not bringing originally guilty persons to criminal liability, etc.

At diagnostics of an investigatory error it is important to exclude subjectivity, inevitable in case of absence of objective criterion. It would be wrong if each of researchers, studying a criminal case, defined – whether an error is made or not proceeding only from own ideas about proper quality of investigation of crimes. The fact of a case error should be ascertained not by a subjective opinion of a researcher (it can appear erroneous) but a corresponding procedural decision of the subject, authorised by the law to recognise this fact established. Such decisions can be the acquittal sentence of court or definition (decision) on dismissal of a case in judicial stages; the decision (definition) of court on returning the case to public prosecutor to remove obstacles for its consideration; others.

Speaking about definition of an investigatory error, the group of authors of Research Institute of the General Public Prosecutor's Office of Russian Federation considered an error itself to be one-sidedness or incompleteness of case study, essential infringement of criminal-procedural law, wrong application of criminal law.

We remain adherents of this investigatory errors construction as a whole, though, we believe, that non-observance of constitutional laws and freedom of the person and the citizen is necessary to be singled out as a separate kind of errors in criminal proceeding under conditions of the Russian Federation Constitution operation. Besides, it is necessary to consider the fact that Russia has been under jurisdiction of the European Court of human rights since 1998.

Resume

We formulate investigatory error concept in the following way:

An investigatory error is not containing signs of criminal – punishable acts illegal or unreasonable action or inactivity of the subjects conducting criminal proceeding, expressed in incompleteness and one-sidedness investigation of a case study by them, non-observance of constitutional laws and freedom of the person and the citizen as well as European standards of fair justice, essential infringement of criminal-procedural law, wrong application of the criminal law and aimed according to the subjects conducting this process at gaining criminal legal proceedings purposes, but objectively preventing from achieving them.

We find it significant to present basic classification of errors developed in the course

of own researches, reflecting the essence of this important legal phenomenon concept.

1. Errors expressed in incompleteness, one-sidedness of case-study, including, fair proceeding, using the language of the European standard, errors connected with conducting of inefficient investigation of criminal cases;

2. Errors expressed in non-observance of constitutional laws and freedom of the person and the citizen, and also the European standards of implementation of fair proceeding during a criminal trial;

3. Errors expressed in essential infringements of criminal-procedural law;

4. Errors expressed in wrong application of the criminal law.

This very essential qualification of investigatory errors can also be transformed into concept of an error in criminal proceedings in general.

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Понятие и основная классификация следственных ошибок

А.Д. Назаров

*Сибирский федеральный университет
Россия 660041, Красноярск, пр. Свободный, 79*

Статья посвящена анализу некоторых значимых определений, связанных с понятием следственной ошибки. Критически рассмотрев позиции ряда ученых – правоведов в этом вопросе, автор предлагает свое определение следственных ошибок, дает их основную (сущностную) классификацию.

Ключевые слова: следственная ошибка, пробелы предварительного расследования, существенные уголовно-процессуальные нарушения.
