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History

History of the Creation of the Investigative Committee of the Russian Federation and its Present Legal Status

For the first time in Russia, the idea of forming investigation agency organizationally and functionally independent from other governmental authorities, was carried out by Peter the Great in the course of judiciary reform, one of whose objectives consisted in separation of criminal procedure into introductory investigation and judicial examination.

In 1713, the first professional investigation agencies of Russia were established as major investigating offices, which in accordance with the Order of 9 December 1717 were subordinate directly to Peter the Great. Competence of these agencies covered cases of most dangerous acts, endangering foundations of the State, primarily criminal acts involving corruption (bribery, peculation, forgeries, swindling) committed by senior government officials of governmental authorities.

According to historians, in the first quarter of 18th century, 11 of 23 Russian senators came under notice of these agencies. Direct subordination to the head of state and independence from other state executive authorities allowed providing objectivity and impartiality of major investigating offices in prosecuting high-ranking officials.

The contemporaries noted that even Senate didn't dare to interfere with activity of major investigating offices. For instance, according to the protocol of a Senate session from 17 October 1722, having considered the address of the Holy Synod containing a complaint against actions of I.I. Dmitriev-Mamontov, representative of investigating office 'Hereunder, these offices are not subordinated to the Senate, non est disputandum'.

In such a way, the concept of non-departmental preliminary investigation was originally formed during the reign of Peter the Great. According to this concept, investigative branch was considered as law-enforcement agency specialized exclusively in investigation of especially dangerous crimes endangering reasons of the State, and in this regard had large procedural powers, self-sufficiency, and organizational independence from other governmental authorities.



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Unfortunately, after the death of Peter the Great, independent investigation agencies he established were abolished, and the concept of non-departmental pattern of investigation agencies was for long forgotten.

Afterwards, deformation of independent non-departmental investigation established by Peter the Great was carried out over a period of the second quarter of 18th century and the beginning of the 19th century.

After abolishment of investigation agencies, preliminary investigation was regarded as ordinary procedural form of pre-trial procedure across all categories of criminal cases, regardless of degree and nature of public danger of a crime. As a result of such step down of preliminary investigation, it was no longer necessary to authorize investigative branch with special procedural powers and assure its organizational independence. For this reason, from 1723 to 1860, crime investigation was carried out by basically such undedicated judicial and administrative authorities as Central Polizeimeister Office, Prikaz of Investigations, lower territorial courts, and police offices established in 1782. This period can be related to the origin and development of so-called administrative organizational model of investigative branch.

By the decree of Alexander I of 29 August 1808, a post of investigative police officer was established in St. Petersburg. These officers were employed on the staff of city police, which was part of Ministry of Internal Affairs (in 1810-1819 - Ministry of Police).

By the end of 18th century, it has become clear that reasonably limited investigative forces must be rationally used. A need has emerged to differentiate forms of introductory investigation depending on nature and gravity of the crime, dividing them into short time and simplified procedure, and to longtime and hard cases. Such a differentiation was introduced in 1832 by particular provisions of part 2 vol. 15 of Set of Criminal Laws. According to these provisions, investigation could be carried out in the form of preliminary investigation (this shortcut and simplified form of action turned up as prototype of modern enquiry) and formal investigation (this more sustained and hard form of action is a prototype of modern preliminary investigation).

However, already in the beginning of 19th century, limitations of administrative model of investigative branch showed up. Organizational dependance of investigation service to the governance of Ministry of Internal Affairs, and related disinterest of the office in criminal prosecution of official bodies determined significant increase of corruption, and as a result, related crimes, primarily economical ones. It has become clear, that such organizational model will only ensure confrontation to general crimes, and is not well suited for fight with offense against foundations of the State.

In this regard, one of the areas of judiciary reform of 1860 was to search for new forms of organization of the preliminary investigation different from administrative model. However, a return



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to the model of Peter the Great non-departmental preliminary investigation at that time was not even considered. It appears that one of the main reasons for this was a weak influence of head of state on political developments in the country.

It was finally decided to remove the investigative agencies of the police force and to transfer them to the organizational structure of the courts. 993 posts of court investigators were introduced in the 44 provinces of the Russian Empire.

This stage of the development of preliminary investigation institution is associated with the emergence of so-called judicial organizational model of investigative branch in Russia. This model became the basis for the organization of military interrogator office established a little later, which according to the provisions of military justice statute of 1867 were attached to military district courts.

Under designated model, investigation service has been developing until the October Revolution of 1917, when according to doom No. 1 «On Court» of 24 November 1917, court investigators institution was abolished. In the time of the birth of the Soviet state, justice system was one of the instruments of class struggle and the means of will assertion by the ruling class. In light of the designated ideology, investigative forces were created in almost all law-enforcement authorities, including judicial authorities.

22 November 1918 unified investigation department of the Cheka was established, and 11 August 1921 - investigative department of the Presidium of the Cheka. Since August 1918, investigative subdivisions were established for each provincial or district department of the Cheka, or for appropriate body in general.

According to Articles 32 and 33 of Regulations on Judicial Organization of Russian Soviet Federated Socialistic Republic of 11 November 1922, investigative branch of judiciary system included the following posts:

- 1) district people's investigators under people's courts;
- 2) senior investigators under provincial courts;
- 3) investigators of critical cases under Supreme Court of Russian Soviet Federated Socialistic Republic;
- 4) investigators of critical cases under People's Commissariat for Justice.

According to Article 23, paragraph 5 of the Criminal Procedure Code of Russian Soviet Federated Socialistic Republics revised in 1923, investigators of military and military transport tribunal were



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included into designated list of investigative posts.

However, largely under the influence of administrative reform of 1923-1927, the essence of which was to strengthen the principle of administrative centralization in government of a state, that prevailed in 1922 in the organization of investigation agencies, trial model was gradually substituted with administrative model. In the light of administrative reform, this system seemed more manageable.

In 1927, court investigators of the Moscow region were moved to procuracy authorities on a trial basis.

Recognizing success of the experiment, 12 April 1928 the panel of People's Commissariat for Justice decided to assign investigative branch at the full disposal of prosecutor's office of Russian Soviet Federated Socialistic Republic. 3 September 1928, the decision of People's Commissariat was formalized in the decree of All-Russian Central Executive Committee and Council of People's Commissars of Russian Soviet Federated Socialistic Republic 'On changes to provisions of judicial organization of Russian Soviet Federated Socialistic Republic'. According to Article 4 of decree of General Executive Committee and Council of People's Commissars of 30 January 1929, military interrogators were in the same way assigned at disposal of military procurator's office.

In such a manner, in the late 1930s, judicial investigation institution, which has been functioning in Russia in various forms since 1864, irrevocably ceased to exist. Administrative organizational model of introductory investigation finally settled in the country.

For the purpose of Article 2 of decree of General Executive Committee and Council of People's Commissars of 20 June 1936, investigative and prosecutorial agencies were separated from People's Commissariats for Justice of union and autonomous republics, and were assigned at full disposal of Procurator of the USSR.

According to decree of Council of People's Commissars of 5 November 1936 'On structure of prosecutor's office of the USSR' investigation department was established in prosecutor's office of the USSR.

In 1938-1939, investigative forces were also established in state security apparatus and police agencies subordinated at that time to People's Commissariat for Internal Affairs of the USSR. SMERSH counter-intelligence of People's Commissariat for Defense established in April of 1943 also had investigative branch.

Further development of the investigative branch was only linked to recurrent redistribution of preliminary investigation among prosecutor's office and internal affairs bodies. Moreover, according to the analysis of the historical background of this process, such redistribution was not usually based



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on any scientific doctrines, or at least the principles of political expediency, but depended on the degree of political influence of the chief of the agency on country's top leadership.

Significantly under the influence of General Procurator's Office, Ministry of Internal Affairs was abolished in the course of judiciary reform of 1956-1964. There was no investigative force in the newly created establishment called Ministry of Public Order Maintenance.

Soon, similar rules were secured in the the Criminal Procedure Codes of the Union republics. According to Article 34, paragraph 7 of the Criminal Procedure Code of the Russian Soviet Federated Socialistic Republic of 1960, 'investigator' term should be only referred to investigators of prosecutor's office and state security bodies.

From this time forward, volume of cases investigated by investigative forces of procuracy authorities kept steadily growing. Thus, for instance, investigators of prosecutor's office concluded 184405 of criminal casein 1960, 244280 cases in 1961, and 256123 cases in 1962.

However, in mid-1960 situation began to change with the strengthening of the political influence of the Ministry of Public Order Maintenance of Russian Soviet Federated Socialistic Republic, and the weakening of the General Procurator's Office.

According to the order of the Supreme Council of the Soviet Union of 6 April 1963, investigative force was established in the Ministry of Public Order Maintenance (later reorganized and renamed back into Ministry of Internal Affairs). At that, part of payroll of investigators of prosecutor's office was assigned to the Ministry of Public Order Maintenance.

After the appointment of N. Shchelokov as the Minister of Public Order Maintenance (who later became Minister of the Interior), and further empowerment of the internal affairs bodies, there was tendency to increase of the number of cases under investigation of the investigators of internal affairs bodies by reducing the range of cases referred to investigators of prosecutor's office. To confirm the above with statistics: 256815 cases were concluded by investigators of internal affairs bodies in 1964, 457173 cases in 1974, and 976123 cases in 1989.

There were over 90% of criminal cases in the proceedings of investigators of internal affairs bodies by 1990, and only 9.1% of cases in the proceedings of prosecutor's office investigators.

Since the beginning of the period of 'thaw' in the 1960s, it has become clear that there was a need in reforming of the current administrative model of investigation. On this wave, for the first time in decades, the forgotten non-departmental model of the preliminary investigation of Peter the Great came under notice. At first, among scientific community, and then - at the level of the country's top leadership.



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As a result, in April of 1990, at the first Congress of People's Deputies of the Soviet Union, the Supreme Soviet Committee of the USSR for legislation and Council of Ministers of the USSR were assigned to design and submit an offer on the creation of the National Investigating Committee.

After all revisions and approvals in the first half of 1993, the draft law 'On the Investigative Committee of the Russian Federation' was submitted to the Supreme Soviet of Russia and approved in the first reading. However, the dissolution of the Supreme Soviet prevented the adoption of this law.

Over the next decade, the unstable political situation in the country continually prevented attempts to introduce legislation for reforming of investigation agencies.

Only in 2007, under the conditions of relative stability and consolidation of political forces, federal laws No. 87-FZ 'On Amendments to the Criminal Procedure Code of the Russian Federation' and 'On Procuracy of the Russian Federation' of 5 June 2007, and 'On Amendments to the Criminal Procedure Code of the Russian Federation' of 6 June 2007 were passed. In accordance with these regulatory acts, authority to charge the investigation was excluded from the prosecutor competence. However, the most important innovation was represented by relative independence of investigative branch of procuracy authorities. These measures have created the conditions for further full organizational and functional independence of the investigation agency.

However, at this stage of the newly created Investigative Committee at the Public Prosecutor's Office of the Russian Federation, it was included into procuracy authorities. Chairman of Investigative Committee at the Public Prosecutor's Office of the Russian Federation, owing to his title, was First Deputy of General Procurator of the Russian Federation, and the workers of Investigative Committee at the Public Prosecutor's Office of the Russian Federation were procuratorial officials.

At the same time, in accordance with Article 20.1, paragraph 3 of the Federal Law 'On Prosecutor's Office', Chairman of Investigative Committee at the Public Prosecutor's Office of the Russian Federation shall be appointed and dismissed by the Council of Federation of the Federal Assembly of the Russian Federation upon the recommendation of President of the Russian Federation. First deputy and deputies of Chairman of Investigative Committee at the Public Prosecutor's Office of the Russian Federation shall be appointed and dismissed by President of the Russian Federation upon the recommendation of Chairman of Investigative Committee at the Public Prosecutor's Office of the Russian Federation. Other workers were appointed and released by Chairman of Investigative Committee at the Public Prosecutor's Office of the Russian Federation. Chairman of Investigative Committee at the Public Prosecutor's Office of the Russian Federation affirmed the structure and staff schedule of the institution, and defined powers of its divisions.

At this stage, despite the procedural and institutional unification of Investigative Committee at the



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Public Prosecutor's Office of the Russian Federation with procuracy authorities, certain administrative subordination of the head of investigative establishment to General Procurator of the Russian Federation was disposed. Personnel policy issues, as well as determination of establishment structure, and authorization of employees of investigation agency were assigned to Chairman of Investigative Committee at the Public Prosecutor's Office of the Russian Federation.

Already at that stage, the model of organization of investigation agency was not administrative from judicial point of view. It included almost all traditional elements of non-departmental model, including organizational independence, no administrative subordination, or subordination to chief of a non-core establishment; functional independence, which provided credibility and impartiality of investigation. Organizational involvement into the structure of procuracy authorities was formal legal, not administrative.

However, the final recovery of Peter the Great non-departmental model of investigative organization took place 15 January 2011, when the Federal Law No. 403-FZ 'On the Investigative Committee of the Russian Federation' of 28 December 2010 came into effect.

As noted in the explanatory memorandum to the draft law, the operation of the Investigative Committee outside the system of Procuracy of the Russian Federation will create necessary conditions for efficient implementation of prosecutors authorities for supervision of procedural activities of pretrial investigation agencies, increase of cooperation between investigation agencies and procuracy authorities, allowing to increase credibility of investigation, thereby ensuring legality in criminal proceedings and strict observance of constitutional rights of citizens.

The Federal Law 'On the Investigative Committee of the Russian Federation' determined that operating control over newly created investigation agency will be carried out by President of the Russian Federation. For the purpose of development of the law, Russian Federation Presidential Decree of 14 January 2011 No. 38 'Activities of the Investigative Committee of the Russian Federation' affirmed:

Regulation on Investigative Committee of the Russian Federation;

List of compliance of special ranks of employees of the Investigative Committee of the Russian Federation to class ranks of public prosecution officers of procuracy authorities of the Russian Federation, and to military ranks;

List of positions in the Investigative Committee of the Russian Federation, which provide for conferment of high special ranks;

List of compliance of positions in the Investigative Committee of the Russian Federation, including military investigation agencies of the Investigative Committee of the Russian Federation, which



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provide for conferment of special or military ranks, designated by Investigating Committee under Procuracy of the Russian Federation, also in military investigation agencies of Investigating Committee under Procuracy of the Russian Federation.

According to Article 13 of Federal Law 'On the Investigative Committee of the Russian Federation', Chairman of Investigative Committee of the Russian Federation is appointed and dismissed by President of the Russian Federation without the approval of body of legislative power, as it was before. Chairman of Investigative Committee of the Russian Federation annually reports to President of the Russian Federation on implementation of state policy within the specified activities, on status of investigative activities, and executed work for its efficiency improvement.

Designated innovations created favorable conditions for effective fight against corruption, also in superior executive and legislative bodies, which was problematic before due to dependance of the investigative establishment chief assignment with the approval of above mentioned government bodies, and subordination to these bodies.

Currently, the Investigative Committee of the Russian Federation is not included into any structure of governmental authorities, or any branch of governmental authorities. Fundamentally, investigative power implemented by the Committee is the continuation of presidential power, and can be treated as checks and balances in the system of separation of powers.

Despite its relative 'youth', activity and further development of newly created establishment will be based on principles of respect and succession of rich historical traditions, which were laid by Peter the Great, and which in new conditions will be gradually developed.

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