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## THE PRELIMINARY INVESTIGATION BODIES IN THE 1917-1930S, XX CENTURY IN SOVIET RUSSIA: DIRECTIONS OF MODERNIZATION

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### ABSTRACT

The relevance of the historical and legal analysis of the formation and activities of the preliminary investigation bodies in the 1917-1930S, XX Century allows us to understand the reasons for their modernization during the fierce class struggle for the establishment of Soviet power and its relationship with the changing realities of social and state development of that period. The article shows that the reorganization of the preliminary investigation during the Soviet period was evidence that reforms cannot be effective if they are not comprehensive and do not cover the entire law enforcement system.

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## 1. INTRODUCTION

The historical and legal analysis of the formation of the Soviet bodies of preliminary investigation, their procedural status, powers, interaction with other law enforcement agencies allows us to understand the reasons for their modernization during the fierce class struggle for the establishment of a new government. The first decrees regulating the structure and activities of investigative bodies emphasized their punitive nature, as they were to become part of the new justice. The legislator, combining the investigation and the trial, establishes their election and accountability by the Soviet government, since in any formation, ensuring law and order is the main function of the state, which must be able to protect itself.

In the conditions of a modern free interpretation of the Soviet period in the history of state and law, it is not always given an objective assessment, which leads to distortions or oblivion of the achievements that could be taken into account when modernizing the bodies of the preliminary investigation [1] and their organizational and legal foundations. The reorganization of the preliminary

investigation during the Soviet period was evidence that reforms cannot be effective if they are not comprehensive and do not cover the entire system of law enforcement agencies.

An objective assessment of the 1917 revolution is that an agrarian state with the majority of the illiterate population was able to create the potential to develop and use the latest technologies, gain great influence in the international arena, and implement a number of principles of a social state. Gradually, production relations, and especially superstructures, began to slow down social processes, which was not the result of a revolution, but a consequence of the policy of establishing an administrative command system. As a result of the strengthening of party leadership, the rejection of innovations in government, socio-economic processes, maintaining the previous pace of development became impossible, which led to their stagnation and history took a different path.

During the revolution, fundamentally new bodies of state power and administration, special bodies were created with the aim of protecting the revolutionary order [2], those relating to the accounting and registration apparatus were preserved, the old judicial system was spontaneously abolished, the creation of new courts through elections and revolutionary tribunals began. To conduct a preliminary investigation in complex cases, investigative commissions were created consisting of three persons who were elected by the executive committees of the local soviets and could be recalled by them. The activities of law enforcement agencies at that time were political in nature since they were aimed at protecting the new regime and its management methods. From the point of view of the new government, the causes of criminal offenses should have disappeared in a socialist society, therefore they were created as temporary structures of government. The direction of their modernization was determined by political, socio-economic, cultural-historical and other conditions that determined the level of development of the state and society, setting them with relevant tasks.

## 2. METHOD

The theoretical and methodological basis for studying the features of their modernization in the Soviet period in the system was the principles of dialectics, historical knowledge, determinism, alternativeness, and others, justifying the reasons for changing them, in the process of changing the judicial system during the 1917-1930s, XX Century. As a result, it was established that the reorganization of the preliminary investigation during the Soviet period was evidence of the ineffectiveness of the reforms if they are not of a comprehensive nature, covering the entire system of law enforcement agencies.

## 3. RESULT AND DISCUSSION

### 3.1 THE THEORETICAL AND LEGAL FOUNDATIONS OF THE INSTITUTIONALIZATION OF THE BODIES OF PRELIMINARY INVESTIGATION IN THE 1917-1930S, XX CENTURY

Post-revolutionary political and economic instability, corporate competition, the growth of individualism and estrangement of social layers of the population became the reasons for the growth of professional crime, the formation of criminal groups, the emergence of new crimes, and the lack of effective methods of dealing with them in practice led to unpredictable results. The aggravation of the criminal situation was also associated with the activities of the Provisional Government, which in

the Declaration declared "a complete and immediate amnesty for all political and religious matters, including terrorist assassinations, military uprisings and agrarian crimes, etc." [3], which became the reason for even more rampant banditry in the country. Although the Provisional Government considered itself the successor of the old regime, it was forced to abolish the gendarme corps (March 6, 1917), the police department (March 10, 1917), and security departments, which embodied the arbitrariness of the tsarist government. The police were renamed the militia, reassigning their leadership to local authorities.

The First World War, the February Revolution, the policies of the Provisional Government led to an increase in crime in the country. Statistics show that the number of convicts for murders has increased: in 1910 - 6777, 1911 - 7517, 1912 - 8134, etc. cases; the number of repeat offenders increased by 100 convicted by general courts in 1908 - 18.3, 1909 - 13.3, 1910 - 21.4, 1911 - 21.9, 1912 - 23, 2. First, the place in number was occupied by property crimes [4]. Thus, the Soviet government had to create a new law enforcement system that would be more effective than that had existed before the revolution. The modernization of the judicial system of that period was associated with the problems of pre-trial proceedings and the need to improve the institution of preliminary investigation.

Immediately after the armed uprising in Petrograd on October 25 (November 8), 1917, the All-Russian Congress of Soviets of Workers 'and Soldiers' Deputies became the supreme body of state power in the country, its executive body was the All-Russian Central Executive Committee (VTsIK), consisting of 13 commissariats. One of them was the Commissariat for Internal Affairs, headed by the first People's Commissar Alexei Ivanovich Rykov. The Decree of the NKVD (People's Commissariat for Internal Affairs) "On the Workers' Militia" of October 28 (November 10) 1917 established its goals and objectives; in the Decree (instructions) of the NKVD and the NKU (People's Commissariat of Justice of the RSFSR) of October 12, 1918, the objects of jurisdiction of the Soviet militia [5] [6] were determined, and accountability and responsibility of officials were discussed. The main duties of the militia included:

- disclosure of crimes, operational-search measures, participation in the preliminary investigation;
- rendering assistance to judicial and investigative authorities, detention, delivery to court or for interrogation of accused and suspects;
- conducting searches, examinations, seizures, execution of sentences, etc.

After the victory of the October Revolution, the judicial system that existed in the Russian Empire was abolished along with the institution of judicial investigators, which were replaced by specially created commissions at the city and district Soviets, initially in Moscow and Petrograd, and then in other cities and provinces where they collegially examined criminal cases, and accepted decisions on them. The investigation of the crimes was carried out by the Red Guard headquarters, whose competence included military criminal and other crimes, the Cheka - counter-revolutionary activity, as indicated in the report of F.E. Dzerzhinsky in December 1917: "the commission conducts only a preliminary investigation, since this is necessary to prevent" [7] and a number of other bodies.

Initially, their activities were not regulated by law, and they were forced to be guided by revolutionary legal consciousness since it was forbidden to refer to the laws of ousted governments.

### 3.2 LEGAL BASIS FOR THE FORMATION OF BODIES OF PRELIMINARY INVESTIGATION IN THE 1917-1930S, XX CENTURY

The problem of the judicial system began to be solved after the adoption of the SNK (Council of People's Commissars) of the RSFSR Decree on the Court No. 1 of November 22, 1917, the draft of which was prepared by the Deputy People's Commissar of Justice P.I. Stuchka. In accordance with it, the preliminary investigation in criminal cases was entrusted to local judges and local councils, under which investigation commissions consisting of three members were established to carry out the preliminary investigation in the most important cases. At the same time, no government body could give instructions on the direction of the investigation of the criminal case. Decree of the SNK of the RSFSR on Court No. 2 of March 7, 1918, in Article 8 contained an indication that the proceedings should be carried out in accordance with the rules and regulations of the Judicial Statutes of 1864, and People's Judges received the right:

- to appoint a preliminary investigation in criminal cases subject to their conduct;
- monitor the production of the inquiry by the militia, give them guidance on the case;
- if necessary, in the case (Article 8), carry out a preliminary investigation.

Another body conducting the preliminary investigation, according to Art. 28 of the Regulations were the county and city Investigative Commissions, which conducted a preliminary investigation in criminal cases under the jurisdiction of the People's Courts with the participation of six assessors. Each of them carried out the investigation independently, but a number of issues related to the selection of a preventive measure, indictment, dismissal, trial, etc., were resolved by them collectively. The said commissions had the right to limit the participation of the defender allowed by the court in the criminal case, if that was required by the interests of disclosing the truth in it. The activity of investigative commissions was controlled by a people's court that examined complaints against their decisions or actions.

The investigative commissions of the district courts were created on the basis of Decree of the Council of People's Commissars of the RSFSR "On the Court" No. 3 of July 20 of that year. Their competence included a preliminary investigation in cases of banditry, robbery, murder, grievous bodily harm, forgery of banknotes, speculation, as well as in the most difficult cases, jurisdictional county and city courts. The activities of the investigative commissions was a stage of criminal proceedings, during which the following was carried out: collection, verification, and evaluation of evidence that provided the basis for decision-making on the termination of the criminal case or its transfer to court. The preliminary investigation began from the moment a criminal case was opened, as the investigator or inquiry body issued a decision. In the Instruction "On the Organization of the Workers and Peasants' Militia" adopted in October 1918, the investigation of cases referred to them by the People's Court was assigned to its competence and criminal investigation.

During the Civil War, the number of criminal offenses increased, so, according to incomplete data from Tsentororisk, in 38 provinces of the RSFSR in 1919, 2816 robberies and robberies were committed, and in 1920 - already 7319; in 1919, 108638 crimes were registered, and in 1920 already 341142. The total crime detection rate did not exceed 45% for individual provinces and 25% for

serious ones. The most common at that time were banditry, terrorism, property crimes, and others [8]. Under these conditions, new forms and methods were needed to build the entire system of law enforcement and judicial bodies, including the institution of preliminary investigation.

The formation of the Soviet judicial system in the 1920s was determined by the idea of the withering away of the institutions of state and law after the victory of socialism. The Guiding Principles on Criminal Law of the RSFSR (December 1919) indicated that "having carried out the communist system, the proletariat will destroy both the state as an organization of violence and the law as a function of the state" [9]. Changes in the organizational structure of the preliminary investigation occurred after the adoption by the All-Russian Central Executive Committee on October 21, 1920, of the "Regulations on the People's Court of the RSFSR". In it, instead of investigative commissions, the following institutions were created:

- people's investigators at the provincial Soviets of people's judges;
- Investigators on critical cases at the provincial departments of justice;
- Investigators for critical cases at the People's Commissariat of Justice.

They had the right to conduct a preliminary investigation of complex crimes on their own, their competence included significant cases that were subject to a people's court with six assessors. When considering criminal cases, people's courts could decide to limit investigative actions to an inquiry conducted by militia investigators or to transfer them to the commission of inquiry beforehand. Thus, until May 1922, the Soviet criminal process had a mixed form, consisting of pre-trial search and adversarial proceedings [10] [11] [12].

People's investigators were elected by the provincial executive committees of the Soviets, they could be recalled, they belonged to the jurisdiction of the Soviets of people's judges. One of the criteria for selecting personnel in these bodies was the presence of party membership since party discipline in the ranks of the CPSU (b) was an effective way to control them. There were fewer communists among the investigative authorities than in court or in the prosecutor's office since they required more professionalism than loyalty to the new government. In 1925, among party investigators, party members were 48.4%; among senior investigators - 32.3% [13]. In subsequent years, the party affiliation of law enforcement officials grew from 54.1% to 67.8%. Organizationally, people's investigators were part of the structure of the People's Commissariat of Justice of the RSFSR, their jurisdiction extended only to the territories of their plots. Subsequently, the posts of people's investigators on important matters at the provincial departments and the People's Commissariat of Justice were established.

The status of the investigator as a representative of the judiciary was maintained in the first Code of Criminal Procedure of the RSFSR of 1922 and 1923. They indicated that the investigators were in the courts that controlled their activities, being controlled by the prosecutor, they could challenge his actions in court. Thus, the Soviet preliminary investigation institutionally retained that place in the structure of the judiciary, which it occupied even before the revolution. In 1924, the Fundamentals of Criminal Procedure of the Union of Soviet Socialist Republics and Union Republics were adopted, which indicated who had the right to carry out an investigation of crimes, they included: people's

investigators, investigators of the tribunals, military investigators and investigators in the most important cases of the People's Commissariat of Justice. Criminal investigation investigator posts were abolished, and those conducting pre-trial investigations were considered as carriers of the judicial function of justice. They had the right to initiate an investigation on citizens' statements, militia reports, officials and institutions, by order of a judge, and also at their discretion. The final decision to terminate the case or bring to trial belonged to the people's court, which allowed the appeal and the decisions of the investigator.

At the All-Russian Congress of Soviet Justice Workers in 1924, the idea was proposed for discussion of reassigning the entire investigative and investigative apparatus to the prosecutor's office, combining inquiry and preliminary investigation, which would become "two equal areas of judicial work". It was not shared by experienced lawyers and the People's Commissariat of Justice. However, the discussion about transferring the preliminary investigation from the court to the prosecutor's office ended with the recognition on March 15, 1928, by the Board of the NKU RSFSR of its correctness [14]. The political will of the authorities was realized in the Decree of the Central Executive Committee and the Council of People's Commissars of the USSR of January 30, 1929, which transferred the investigating apparatus to the prosecutor's office, so the preliminary investigation, having lost the signs of competition, turned into a "prosecutor's inquiry" with an accusatory bias. Thus, the idea of the prosecutor of the Supreme Court of the USSR A.Y. Vyshinsky realized, a preliminary investigation, as judicial activity ceased to exist, which led to an increase in the prosecution and a change in the existing principle of adversarial process in criminal proceedings. In the future, proposals were discussed on the reassignment of the investigative apparatus of the NKU of the RSFSR, its liquidation in general and the transfer of its functions to the militia.

Decisions of the NKU RSFSR repeatedly indicated that prosecutors should not turn investigators into their assistants without providing them with an independent procedural status, but their situation worsened after the formation of the USSR Prosecutor's Office on December 17, 1933. If earlier it was in the structure of the People's Commissariat of Justice, now it has become a public authority, which has changed its status and position. The prosecutor had the right to entrust the militia with an inquiry, his materials were sent to the prosecutor, who approved the indictment and referred the case to court. In 1936, investigative departments were established in the structure of the USSR Prosecutor's Office and in the composition of republican prosecutor's offices, which carried out operational management and control of the preliminary investigation.

In the late 30s, new investigative bodies were created outside the justice system:

- December 22, 1938, in the structure of the NKVD of the USSR, an investigative unit was established;
- September 4, 1939, investigative units were created in the Main Directorate of State Security and the Main Economic Directorate;
- On August 5, 1939, the same unit was formed in the structure of the Main Prison Directorate.

As a result, the posts of investigators and senior investigators appeared in the NKVD system, the procedural position of which was determined by the rights and obligations established by law in relation to inquiry bodies and departmental regulatory instructions.

## 4. CONCLUSION

This study finds that the formation of new legal relations begins with a review of existing practice and the fitting of established legal constructions to it, which in the future and in a new form will reflect other social relations. A study of the formation and activities of the preliminary investigation bodies in the Soviet period allows us to conclude that they were transformed from an institution related to judicial activity to the prosecution system and then were assigned to the sphere of internal affairs bodies. It is established that in the late 1930s in the USSR, a dualistic model of departmental investigative apparatus was created, which was not similar to their pre-revolutionary organization. The legal status and scope of powers of the preliminary investigation bodies in the system of power relations determine the effectiveness of the fulfillment of their obligations to protect the rights and freedoms of man and citizen.

## 5. AVAILABILITY OF DATA AND MATERIAL

Information used or generated from this study is available upon request to the corresponding author.

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