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## Innovative technologies and principles of criminal proceeding when conducting investigative actions

### ИННОВАЦИОННЫЕ ТЕХНОЛОГИИ И ПРИНЦИПЫ УГОЛОВНОГО СУДОПРОИЗВОДСТВА ПРИ ПРОВЕДЕНИИ СЛЕДСТВЕННЫХ ДЕЙСТВИЙ

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#### Abstract

The discrepancy between the introduction of consumer innovations at the modern level of the criminal procedure minimizes the operation of the principle of criminal proceedings. Purpose of the study is to analyze the use of the problems of introducing innovations in criminal proceedings, as well as the development of norms aimed at improving the mechanism for exercising rights during investigative actions using modern technical means. Methodology: the study of the problem of non-use in the preliminary investigation of modern technologies was carried out using formal-logical research methods, analysis of theory and practice, synthesis and the dialectical method. To develop recommendations for improving legislation, in addition to those listed, comparative and statistical methods were used, as well as interviewing. The main results of the work are: a proposal for the creation of official websites of the preliminary investigation bodies. It was recommended to develop remote investigative actions using video conferencing systems in order to comply with the guarantees of the rights of participants in criminal proceedings; to record investigative actions in modern innovative ways, eradicating the institution of attesting witnesses. The creation of a single base on the blockchain principle will help to avoid a huge flow of information.

#### Аннотация

Несоответствие уровня внедрения инноваций потребностям современного российского уголовного процесса сводит к минимуму действие принципов уголовного судопроизводства. Целью исследования является анализ существующих проблем внедрения инноваций в уголовное судопроизводство, а также разработка норм, направленных на совершенствование механизма реализации прав личности при проведении следственных действий с использованием современных технических средств. Методология: изучение проблемы неиспользования на предварительном следствии современных технологий проводилось с помощью формально-логических методов исследования, анализа теории и практики, синтеза и диалектического метода. Для выработки рекомендаций по совершенствованию законодательства, кроме перечисленных использовались сравнительный и статистический методы, а также интервьюирование. Основными результатами работы являются: предложение по созданию официальных сайтов органов предварительного следствия. Рекомендовано развивать дистанционное проведение следственных действий с использованием систем видеоконференцсвязи для

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**Key words:** innovative technologies in the criminal process, modern technical means in the criminal process, mechanism for implementation of the criminal process principles, conduction of investigative actions.

## Introduction

The mechanism for ensuring observance of human rights in criminal proceedings has shown its weakness in an emergency situation faced by the whole world - pandemic. The existing mechanisms for ensuring the principles of criminal proceedings are ineffective, which means that it is necessary to improve them or create new ones. Information technology has come to the aid of legal proceedings. But innovations are slowly being introduced, particularly at the preliminary investigation stage. The beginning of the century is characterized by rapid innovative development. What was a fantasy of writers a few years ago is a reality now: intelligent software, alternative energy sources, etc. (Nekrasov, 2017). In recent years, the means of obtaining and processing information have been improving quickly. Modernization of enterprises makes it possible to assign most of the management and control functions to technical equipment (Bertovsky, 2021).

In the modern world, it is already difficult to imagine how we can do without gadgets. But while all spheres of life have been moving to the new information level, the criminal process remains "conservative". In other areas, information is systematized and stored on electronic media, in databases. It is carefully guarded with codes and access keys. All fields of science, technology and social life begin to introduce innovative technologies, a huge workflow takes place in the online system.

The relevance of the article is that the inalienable rights of an individual during the preliminary investigation require enhanced guarantees using

соблюдения гарантий прав участников уголовного судопроизводства; фиксировать следственные действия современными инновационными способами, искореняя институт понятий. Создание единой базы данных уголовных дел по принципу блокчейна поможет избежать огромного потока информации при ведении уголовного производства, обеспечивая прозрачность уголовного процесса, исключая возможность изменения посторонними лицами.

**Ключевые слова:** инновационные технологии в уголовном процессе, современные технические средства в уголовном процессе, механизм реализации принципов уголовного процесса, проведение следственных действий.

modern information and communication technologies. One of the serious problems of Russian criminal proceedings is to ensure efficiency. (Tukhtasheva, 2020). The fear of the widespread use of digital technology in criminal proceedings can be justified. From the point of view of human rights observance, any information leakage with data from the preliminary investigation (testimony of participants, personal data, etc.) may lead to negative consequences. "Innovative products" should not only be modern, but also comply with the principles of criminal procedure. The process of legislative regulation should be reduced as much as possible in time (Nechaeva 2015). But digital legal proceedings are designed to improve the efficiency of the criminal process. One of the main directions of digital legal proceedings is information infrastructure and information security.

## Purpose

The purpose is to develop theoretical provisions aimed at improving the mechanism for realization of individual rights when conducting investigative actions by introducing modern technical achievements. And on the basis of the theory, to study the practical possibilities of using modern technical means when conducting investigative actions.

## Methods

With the help of the dialectical and comparative legal method, the author analyzes the problems in the observance of the principle of respect for the honor and dignity of the individual during the

investigation. On the basis of the formal-logical method, theoretical attempts have been made to introduce innovative technologies in the production of investigative actions.

The specific sociological method was used in the study in order to find ways to improve the criminal procedural legislation regulating the production of certain investigative actions in terms of compliance with the principle under consideration. With the help of this method, the materials collected through interviews and anonymous conversations were processed, which made it possible to put forward a number of theoretical propositions.

During the study, were interviewed officials of the investigation and prosecutor's offices. According to the majority of respondents, the current legislation does not guarantee the observance of individual rights during the preliminary investigation. 60% of the interviewed officials of the investigation and prosecutor's offices believe that the conduct of interrogations does not meet the requirements of respect for the dignity of an individual.

### Literature Review

The study examined the work of several legal scholars who dealt with the stated problem. The author of the article "Smartphone as a scientific and technical means of an investigator" E.P. Ishchenko suggests investigators use a smartphone with a special application, which, in our opinion, can facilitate the work of the preliminary investigation bodies. But here there may be technical difficulties - the smartphone must be "service", be on the balance sheet of the organization. Novikov S.A. in the work "Interrogation with the use of videoconferencing systems: tomorrow of the Russian preliminary investigation" rightly notes that it is necessary to legislatively consolidate the use of videoconferencing during the preliminary investigation. Considering the opinion of this scientist, our work draws theoretical conclusions on improving legislation.

One of the problems under consideration in the study is the institution of the attesting witnesses. In this regard, the most relevant works of S. B. Rossinsky are considered. "Appendix to the protocol of investigative action: to recognize or not to recognize as material evidence? 2017", Bairova A.T. "On the need for legislative regulation of the participation of attesting witnesses in criminal proceedings. 2018", Kazakova A.V. "New technologies in Russian

criminal procedure. 2017", Svetlichny A.A. "On the role and importance of an expert and a specialist at the initial stage of the investigation of crimes, 2015", Belkina A.R. "Novels of criminal procedure legislation - a step forward or a return to proven positions? 2013", Stelmakh V. Yu. "Modern problems of fixing the course and results of the production of investigative actions and possible ways to solve them. 2016". Based on the analysis of these materials, it was concluded that the Institute of the Understood as a relic of the past.

To write the next block of the article, the works of Pastukhov P.S. were used. "On the need to replace a written protocol in criminal proceedings with an electronic document. 2015.", T.V. Lyanguzova "Actual problems of the production of investigative actions in the Russian criminal process. 2018", Elteko, K. S. "On the use of modern technologies in the investigation and disclosure of crimes. 2021", Kravetsa E.G. "Information and communication technologies as an element of technical and forensic support for the investigation of crimes. 2016", Kushkhov R.Kh. "Actual problems that complicate the development of investigative actions in the Russian criminal process. 2019". On the basis of the studies studied, conclusions were drawn about the use of modern information technologies in the collection, storage and use of information during the preliminary investigation, their protection from unauthorized access.

It is recommended to create official websites of the preliminary investigation bodies on the Internet for submission of petition, application, or complaint. At the request of the participants, it is possible to conduct a preliminary investigation in a face-to-face and remote format. By analogy with Article 278.1. of the Criminal Procedure Code of the Russian Federation, it is necessary to regulate interrogation using videoconferencing systems. In order to protect the personal data of participants in criminal proceedings during remote investigative actions, it is necessary to use proctoring. To record the course of the investigative action, in compliance with the guarantees of the participants' rights in criminal proceedings, it is necessary to involve an expert with modern means of video recording, instead of witnesses.

### Results and discussion

One of the important problems of the observance of individual rights during the preliminary investigation is the protracted procedural terms. To accelerate them, it is necessary to use the

advances of science in the field of information technology. Often the reason for delaying deadlines is the impossibility of conducting faster investigative actions. Let us consider the most pressing issues that arise when conducting investigative actions.

Currently, the Federation Council has submitted to the Duma a draft amendment to the Criminal Procedure Code of the Russian Federation, according to which investigators would be able to conduct interrogations and identification through video communication. This measure would greatly facilitate the work of an investigator and speed up investigation. At the same time, it is proposed to provide for the features of use of video communication when conducting investigative actions, without specifying the participants of the criminal process and without limiting the use of such communication.

The bill was criticized by some practitioners, believing that this format would not allow to verify the reliability of testimonies, since it is important to personally observe the behavior of the interrogated and see the emotions of interlocutors. Modern video equipment conveys all human emotions. The video recording, attached to the materials of the criminal case, will allow a judge in the future, if necessary, to evaluate the given testimony on the basis of his inner conviction. An investigator in the existing Russian criminal process takes notes and checks them with the help of other investigative actions. In accordance with the Criminal Procedure Code of the Russian Federation, the interrogation protocol is an accurate summary of an interrogated person's speech. If at the present time an investigator, when drawing up the interrogation protocol, simultaneously asks questions, observes the behavior, takes notes, and corrects the testimony, then those actions only interfere with the establishment of the truth, since it gives the interrogated time to think over the answers. There is an interesting proposal of E.P. Ishchenko, who proposes to use a smartphone with a special application that makes audio recording (like a dictaphone recorder) and provides text processing of recorded information. An investigator only needs to copy the text from the application and process it (Ishchenko et al, 2017).

We are supporters of innovations in the criminal process, we believe that it is time to eradicate many institutions that do not meet modern requirements for conducting investigative actions. An investigator spends a lot of time

organizing investigative actions. By analogy with Article 278.1. of the Criminal Procedure Code of the Russian Federation, we believe that it is necessary to regulate interrogation using videoconferencing systems. An investigating person instructs the investigative authority at the location of a witness to organize interrogation by using videoconferencing systems, while the identity of the witness is verified, and subscription is taken to explain the rights, duties and responsibilities provided for by the Criminal Procedure Code of the Russian Federation before the interrogation begins.

We absolutely agree with the opinion of S.A. Novikov, who rightly notes that it is necessary to legislatively consolidate the possibility of using videoconferencing during the preliminary investigation. Despite possibility of an investigator to instruct another investigator in the course of such investigative actions as interrogation and confrontation, an assigned investigator for criminal case will conduct the interrogation better, since he knows all the circumstances of the case. Moreover, during the interrogation clarifying questions may arise, the answers to which may significantly affect the course of investigation (Novikov, 2014).

Videoconferencing technology has become one of the most relevant and widespread tools against the background of the pandemic, however, many processualists have questioned the proper protection of information and personal data. So, L. Mayrova notes that in practice there are examples when an investigator conducted investigative actions using Skype, and even went to the court with a petition for applying a measure of restraint. The activity of investigator is commendable, especially in the conditions of pandemic, when all reasonable deadlines expire, but there is a problem of personal data protection. The parties are located remotely from each other at different computers, so it is unknown who else is present in the rooms. As a solution to the problem, proctoring can be used — this is a control procedure where the whole process is supervised by an administrator — proctor (specialist, expert). He follows the actions using webcam and sees what is happening on the computer monitor and in the room. Before conducting an investigative action, an investigator should ask to show the room from which the videoconference is being made, make sure there are no unauthorized persons, and ask to position the monitor so that there is an overview of the front door. In any case, the regulation of conducting "remote" investigative

actions requires careful but accelerated development.

Another problem of conducting interrogations and other investigative actions is the widespread violation of individual rights.

We interviewed accused and convicted persons, investigative and operational workers, as a result of questioning it was found that, according to the majority of respondents, the current legislation does not protect the rights of an individual violated during the preliminary investigation.

None of the accused and convicted persons interviewed (106 people) believes that their rights are guaranteed.

An anonymous survey of officials of the investigation and prosecutor's offices (23 people) showed that during the interrogation they often use intimidation in order to obtain testimony quickly. 60% of respondents believe that blackmail, lies, promises relate to the methods and tactics of interrogation; 13% do not admit treatment that degrades human dignity in their activities; 60% believe that the conduct of interrogations does not meet the requirements of respect for the dignity of the individual.

Approximately half of the respondents admitted that for the purpose of prompt and effective investigation they resorted to the methods and tactics of interrogation that cause fear, depression, resentment, without thinking that such treatment causes moral suffering.

The use of video recordings during investigative actions will also help to solve this problem. If the interrogation rooms and other investigative actions are equipped with video recording equipment, this will facilitate the conduct of interrogation and will protect the rights of the interrogated, as well as officials from slander. In addition, it is necessary to give the opportunity to immediately, including remotely, appeal against the actions of officials, which will make criminal proceedings more open and "transparent".

The processualists have controversies regarding the institution of witnesses in criminal proceedings.

Article 170 of the Code of Criminal Procedure of the Russian Federation provides for investigative actions (seizure of property; examination; examination of corpse; exhumation; investigative experiment; seizure; inspection, seizure, and removal of copies from detained

postal and telegraph items, verification of testimony on the spot), in which witnesses may not be involved, provided that technical means are used to record the progress and results of the investigative action. Audio or video recordings made with the help of technical means have great potential information value and, if necessary, will help to recreate the pictures of the investigative action for the purpose of evaluation and use as evidence (Rossinsky, 2017). Among the positive aspects of the use of special technical means when conducting investigative actions, it should be noted that they will be able to record the features of objects the behavior of specific individuals most accurately and other factors that are difficult to reflect in the protocol (Bairov, 2018).

The idea of Kazakova A.V. that the introduced provisions, on the one hand, simplify the conduction of investigative actions, since there is no need to "search" for witnesses, is of interest. On the other hand, instead of witnesses, a specialist is involved who makes a record, which is attached to the protocol, and this complicates the procedure (Kazakova, 2017). We do not agree that these norms somehow complicate the investigation. In practice, we got out of this situation as follows: an expert of the forensic service is involved as a specialist. Firstly, the expert has a sufficient level of knowledge in the technical field, and secondly, he performs his duties on a reimbursable basis, which simplifies the procedure. An expert is warned about criminal liability and there are no technical hitches, the disc is attached to the criminal case and in cases of suspicion of the court, it can be subjected to examination in another expert institution. The success of solution and investigation of crimes depends on the effectiveness of the use and application of special knowledge by an expert and a specialist. (Svetlichny, 2015). Thus, all the necessary guarantees are met. While the witnesses are random people who are not always ready to sacrifice their personal time while performing a civic duty. Secondly, there are situations where it is important that the witnesses are psychologically stable. It is also impossible to exclude the human factor, a person who for the first time finds himself in a situation unfamiliar to him cannot help but share his experiences with loved ones, violating the mystery of the investigation. The institute of witnesses should be abolished long ago, there are many modern innovative ways to record investigative actions. The success of solution and investigation of crimes depends on the effectiveness of the use and application of special knowledge, in

accordance with the current legislation, by knowledgeable persons - an expert and a specialist (Svetlichny, 2015). The only thing that raises doubts, here we unequivocally agree with the opinion of A.R. Belkin, is the provision of Article 170 of the Code of Criminal Procedure of the Russian Federation stating: "If the use of technical means is impossible during the investigative action, then an investigator makes an appropriate entry in the protocol." With this clarification, A.R. Belkin called an investigator's obligation to use technical means as "pure fiction." (Belkin, 2013). The use of technical means should be mandatory. Modern equipment allows you to record the situation or information better than the investigator in his description (Stelmakh, 2016). Part 6 of Article 164 of the Criminal Procedure Code of the Russian Federation allows "when conducting investigative actions to use technical means and methods of detecting, fixing and removing traces of crime and material evidence" (8), but practitioners are in no hurry to move away from the usual, proven legal proceedings. P.S. Pastukhov proposes to completely abandon paper recording of investigative actions and use only records of progress and results made with the help of special equipment. (Pastukhov, 2015.) It seems that this will happen in the near future, but the modern criminal process is not ready for this. However, since 2019, artificial intelligence, as a judge of the virtual court of the city of Beijing, has been considering certain categories of civil cases (Bertovsky, 2021).

It is difficult to overestimate the significance of the investigative action - the inspection of the scene of the incident, often not only the effectiveness of the investigation depends, but also the fate of the participants in the criminal process depends on it (Lyanguzova, 2018).

Among the information technologies used in the investigative action - inspection of the scene, it is necessary to note the global positioning technology (GLONASS, GPS), which allows you to determine the location of objects most accurately at the scene and near it. Technical means not only facilitate the achievement of the truth in the case, but also ensure the collection of evidence, without violations of human rights and freedoms. We need to move away from bureaucracy and paper media and use modern technology for storing information.

Special software "MSR-TV" allows you to receive forensic photographs with text, graphic or audio commentary, which are attached to the protocol of the inspection of the scene in the form

of a photo table. A camera with GPS module is designed to geocode the results of shooting at the scene. In situations where conducting an inspection may pose a threat to the life and health of participants, it becomes necessary to use unmanned aerial vehicles. (Elteko & Sidorkevich, 2021).

Despite the gradual introduction of innovations, according to the results of interviewing practitioners cited in the study by E.G. Kravets, "the work of an investigator is provided by less than 20% with computer equipment and video recording tools; only 18.3% of the total number of respondents noted the presence of modern video equipment in their units and only 4.4% of the interrogated investigators regularly practice video recording of investigative actions." These values show the colossal lag of the criminal process and the technical one. In addition to the conservatism of the Russian criminal process, which has long needed changes, the factors influencing the lag are outdated professional training of investigators, low qualifications in the field of information technology. (Kravets, 2016)

As a solution to this problem, we can propose the creation of innovative professional programs at the junction of two specialties of legal and technical areas. (Bertovsky, 2017).

Currently, an information and analytical system for ensuring the activities (ISOD) of the Ministry of Internal Affairs of Russia has been created, which united most of the divisions, a system of electronic passports of a criminal case has been experimentally introduced, provided for the possibility of entering scanned and other copies of procedural documents on criminal cases and materials of checks of reports of crimes into the electronic database.

If the investigative actions are carried out using information and technical achievements, in addition to a positive impact on the observance of the rights of participants, the problem of the cumbersomeness of criminal cases is noted. Numerous disks are submitted to the court as attachments to criminal cases. Information storage devices. The absence of bureaucracy and transparency of the criminal process can be ensured by creating a single database of criminal cases on the blockchain principle. Blockchain is a distributed database with no storage devices connected to a common server. The main principles of this technology for collecting and storing information are the transparency of operations, without change possibility by persons who do not have access (Bertovsky, 2017).

In 2016, the Code of Criminal Procedure of the Russian Federation was supplemented with a number of provisions regulating the execution of procedural actions by printing, electronic or other means (Article 474 of the Code of Criminal Procedure of the Russian Federation). But the procedure for using electronic documents in criminal proceedings, regulated by Article 474.1 of the Code of Criminal Procedure of the Russian Federation concerns only judicial proceedings. It is necessary to make the preliminary investigation accessible – it is not so difficult to create official websites of the preliminary investigation bodies in the information and telecommunication network "Internet". A petition, application, complaint may be filed in the form of an electronic document signed by a person with an electronic signature. At the request of the participants, it is possible to conduct a preliminary investigation in a face-to-face and remote format.

As an experiment, it is necessary to switch to this format in one of the regions of Russia, and then, considering the experience of the experiment, under the close supervision of the Commissioner for Human Rights and the court, introduce it everywhere. Undoubtedly, modern information technologies are able to ensure the invariability and authenticity of the original information, but only when providing protection against unauthorized access. Modernization of investigative actions depends on the development of criminal justice as a whole. How the system of investigative actions will develop depends on the legislator's choice of ways to improve criminal justice as a whole (Kushkhov, 2019). It is not easy to achieve digitalization of legal proceedings in practice, and in addition to staffing, it is necessary to develop such areas as: conducting scientific research in the field of infrastructure modernization and strengthening information security, with amendments to the current legislation.

## Conclusions

At the end of the study, it seems necessary to summarize some results of the implementation of the goals and objectives set in the work, to formulate in a generalized form the main scientific and theoretical conclusions.

The problem of illegal methods of investigation is complex and is unlikely to be completely eradicated, but to minimize the negative consequences is the primary task of the novels of the criminal process. The State is obliged to provide the preliminary investigation bodies with

modern computer, special and forensic equipment, increase the staff of investigators and ensure the possibility of their retraining in the field of IT technologies.

The state needs to immediately take the situation under strict control, regulate law enforcement, develop, and legislate provisions regulating the use of information technologies during the preliminary investigation, considering guarantees of the constitutional rights of participants in criminal proceedings.

Russian legal proceedings just begin to introduce videoconferencing, and only at the judicial stage. During the year of the pandemic, the education system introduced videoconferences in all educational institutions of Russia, which also prevents the rapid introduction of innovations in the criminal process.

Unfortunately, innovation is too slow to penetrate into the criminal justice system. While the ideas of legal scholars are being tested and legalized, criminals have been using the latest innovative developments for a long time.

Summing up the above, it should be noted that the proper organization and high-quality production of investigative actions using modern technological advances allows us to ensure observance for human rights when conducting investigative actions. The recommendations developed in the course of the study may be in demand for practical application in order to investigate criminal cases effectively.

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