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Issues of the Theory of Investigative and Judicial Errors in Criminal Proceedings

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In this research paper the author from the theoretical point of view gives definition of the concept of investigative and judicial errors in criminal proceedings and their causes, offers a basic and essential classification of these errors and points out a new cluster of errors – fundamental errors. Using criminal-political approach, the author studies general and specific strategies in the context of the mechanism of prediction, detection, elimination and prevention of investigative and judicial errors in criminal proceedings.

Keywords: investigative error, judicial error, fundamental error, criminal-political strategies, criminal procedural mechanism of prediction, detection, elimination and prevention of errors, causes of errors.

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Research area: law.

Studies of the errors in criminal proceedings have been conducted for several decades. Theoretical works of the legal scholars in this field, as well as researches conducted by the author since the period of the 90s, allow introducing a specific theoretical model of errors in criminal proceedings.

In scientific literature and in the practice of criminal justice authorities a lot of terms are used to indicate errors of the preliminary investigation and trial: "omissions of the preliminary investigation", "gaps of the preliminary investigation", "incompleteness the preliminary investigation"[1], "error"[2], "investigative errors"[3], "judicial error" [4], "violation of law"[5], "breach of law" (procedural and substantive), including "substantial violations ..." , "criminal procedural violations", "deviations from the norms of law", "procedural errors"[6], "delusions"[7], etc. There is no doubt that all these concepts are ambiguous.

In criminal procedure legislation the term "investigative error" is not used. However, in criminal procedure science the concept of "investigative error" proved its right to existence.

During the preliminary investigation various investigative errors are made: in the use of the substantive (criminal) and criminal procedural law, other errors (incorrect application of the recommendations of psychology, victimology,

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expertology and criminology; for example, such a type of error as organizational and tactical, related to the investigation planning, versions proposition, formation of teams of investigators to investigate the case, conducting urgent (initial) investigative actions, technical means application, criminal records, etc.[8]). In the context of certain types of investigative errors, the study of expert and criminalistic, as well as operative investigation, psychological, administrative and other errors is topical, but, nevertheless, these errors should be the subject of a separate research.

Errors made by the investigator not at the pre-trial stages, but during the investigation of new or newly discovered facts are seen as a specific kind of investigative errors (Articles 413 – 419 of the Russian Federation Code of Criminal Procedure). In the course of such an investigation interrogations, examinations, inspections, seizure and other necessary investigative actions could be carried out.

Errors at the pre-trial stages of the criminal process are made by officials: the bodies of inquiry (the errors of the investigator, chief of the inquiry office, head of the body of inquiry); investigative agencies (errors of the investigator and the head of the investigative body); and prosecutor's office (errors of the prosecutor, his/her deputies and assistants[9]).

Errors of the inquiry officer and the investigator can be combined into one group, entitling them **investigative errors**.

Errors made by the court (judge) in criminal cases at the pre-trial and trial stages of the criminal process (courts of the first instance, appeal, cassation and supervisory authorities) at the stage of execution of the sentence are commonly called **judicial errors**[10]**.** According to the fair opinion of S.L. Lon', they must be distinguished with abuse in the judge's activities[11]. According to the results of our research, in the vast majority of cases the judges' error is predetermined by the initial error of the investigator that was "missed" (unnoticed) by the chief of the inquiry office, head of the body of inquiry, head of the investigative body and the prosecutor.

If you take a historical journey, a certain circle of processualist scholars in the criminal procedure science fundamentally approached the definition of investigative and judicial errors. In our opinion, some of these works deserve special attention.

In 1867, under the editorship of P.N. Tkachev, a book about judicial errors that was a kind of instruction for the members of jury was published. Having analyzed the nature of judicial errors and their typicality, the authors, based on the theory of probability, came to the conclusion that there is "one chance out of fifteen to be wrongfully convicted"; "unwittingly we have to acknowledge the great wisdom of the old saying: it is better to forgive ten guilty persons, than to condemn one innocent"; the compensation for the error might be mitigation of punishment (in this case the authors were against death penalty, there again, because of the probability to make a judicial error; gave reasons that in the case of panel hearing of a criminal case the risk of error is reduced[12].

Fundamental research of errors in the 70s of the 20th century in the Federal Republic of Germany was conducted by a famous German jurist Carl Peters, a scholar and an expert in the field of criminal procedure and youth rights. In his study, the scholar analyzed the sources of errors in criminal trial, showing that occurrence of these errors in criminal cases is always a reviving procedure[13].

The first academic study concerning the problems of judicial errors was conducted in the Soviet period by the scholars from the Institute of State and Law of the Academy of Sciences of the USSR. And in the late 80s – early 90s of the last century, the study of investigative and

judicial errors was conducted by scholars under the auspices of the Research Institute of the Prosecutor General of the USSR[14].

The team of scholars from the Institute of State and Law of the Academy of Sciences of the USSR (M.A. Avdeev, V.G. Alekseev, G.Z. Anashkin, A.D. Boikov, Yu.A. Lukashov, K.S. Makukhin, T.G. Morshchakova and the team leaders – V.N. Kudriavtsev and I.L. Petrukhin) illustrated occurrence, structure and dynamics of judicial errors, and ways of their elimination. The scholars studied the influence of: social and psychological factors; scientific organization of labor in national courts; characteristics of judges' staff; criminal policy; judicial practice of the higher courts and attitudes of public prosecutors and public defenders[15] on the efficiency of justice.

A team of contributing criminal procedure scholars[16] of the Research Institute of the Prosecutor General of the Russian Federation conducted a large-scale study of the problem of investigative and judicial errors.

For example, **investigative errors** were defined by the researchers from the prosecutor's office as "illegal and misguided actions of the investigator to institute criminal proceedings and imprisonment of citizens, suspension, termination and transfer of criminal cases with indictment to the prosecutor to be sent to the court, which according to the investigator's misconception were legitimate and were allegedly aimed at ensuring the tasks of criminal proceedings[17]". They considered illegal and groundless decisions of the investigator on charges against a person and sending the case to the court in the absence of sufficient evidence; referral a case to the court in the presence of the significant violations of law and incorrect application of the substantive law; suspending a case when no guilty person was detected that was taken without depleting all the possibilities to solve the crime; a case dismissal in the absence of legal basis and others as erroneous.

A.B. Solov'ev in his works repeatedly drew attention to the fact that in defining investigative errors two things are important: "Firstly, it is the unintentional motivation of the investigator's actions. The investigator wrongly evaluates his/her actions as legitimate and oriented to coping with the tasks of the criminal legal proceedings. Otherwise, when the investigator's actions are of deliberate nature, it is possible to say that the investigator is committing crimes against justice (Articles 299, 300, 301, 302 and 303 of the Criminal Code of the Russian Federation). Secondly, we must judge from significance of harm inflicted by the investigator's error"[18].

Long-term study of investigative and judicial errors in criminal proceedings allows us to consider them as a phenomenon in criminal proceedings. Indeed, it is important to emphasize that in the ideal model of criminal proceedings, which is based on the strict observance of the principle of legitimacy by the persons leading these procedures, there should not be errors. But they have always presented and, unfortunately, will present. And this forms phenomenological effect of the problem of error in criminal proceedings. And, of course, it is a negative phenomenon. As well as, for example, the phenomenon of crime, the phenomenon of accusatory bias in a criminal process, the phenomenon of torture and other unlawful and illegal practices in the investigative and criminal proceedings activity.

Taking into account the phenomenal nature of errors in criminal proceedings, from the scientific point of view, we cannot raise a question of the total liquidation of these errors: they can be minimized; a lot of them can be avoided or prevented; errors could and must be detected, eliminated, and some of them predicted to avoid.

The phenomenon of error in criminal proceedings is inextricably connected to the

study of their causes, conditions and factors that contribute to their occurrence in criminal cases.

The starting point for studying the phenomenon of error, if we consider this problem from the theoretical point of view, is a precise definition of the phenomenon of error.

From our point of view, to define the notions of "investigative and judicial error" it is important to consider the following:

1. The error, under no circumstances, is a crime of the person conducting criminal proceedings: error is everything that is not socially dangerous acts.

2. Officially, only those deviations from the principle of legitimacy in criminal proceedings that are documented by the competent persons conducting criminal proceedings in the procedural documents (for example, in court verdict, the prosecutor's resolution for additional investigation of the criminal case, etc.), can be considered as error.

Other participants (the defender, the victim, the accused and others) can, including procedurally, respond to errors and highlight them, but until the authoritative person conducting the criminal proceedings officially reacts to it in the procedural documents and detects the error, we cannot speak about procedural status of error.

Of course, in addition to the documented procedural errors there are a large number of latent errors. It is important to detect, eliminate and prevent them. But, nevertheless, for the scientific purposes those errors that were procedurally documented will be included in our definition of error. It is important, especially in the context of distinguishing the concepts of error and criminal procedure offense, always separate the notion of error and the consequences that it caused or could have caused. In our view, it is possible to talk about three types of consequences:

- procedural consequences directly for a criminal case (evidence that were considered inadmissible; return of a criminal case by the prosecutor for further investigation; recharacterisation of a criminal act, etc.);
- consequences for the officials who made errors, who did not detect and did not eliminate them (disciplinary and material sanctions for these persons in connection with the employment relations);
- consequences for the persons involved to the orbit of criminal proceedings (release of a suspect or an accused person from custody, change of judgement, etc., as well as the effect of the legal mechanisms for rehabilitation).

For rightful and legitimate resolution of a criminal case the first kind of consequences will be legally relevant. Error in criminal proceedings in a particular criminal case is distanced from legal liability of an official who made it or didn't identify and didn't eliminate this error.

Developing scientific approach for detecting errors, which in Soviet times was proposed by a team of researchers of the Research Institute of the General Prosecutor's Office, at that period of time of the USSR, we propose our definition of error, taking into account the realia of the contemporary criminal procedure actions.

We consider non-observance of constitutional rights and freedoms of man and citizen[19] as a separate type of errors due to the special significance of the provisions of the Constitution of the Russian Federation for criminal proceedings. In addition, it is necessary to take into account that Russia must strictly comply with the rules and principles of international law, all the more so that since 1998, it is under jurisdiction of the European Court of Human Rights.

Taking into account the aforementioned approaches to the concept of error, we formulate it in the following way:

Error in criminal proceedings (investigative and judicial) is not containing evidence of criminally punishable acts illegal or misguided action or inaction of persons, conducting criminal procedure, expressed, according to recordings, in the legal documents, in incompleteness, one-sidedness and biased approach in the study of the circumstances of the criminal case by these persons, non-observance of constitutional rights and freedoms of man and citizen, as well as international standards of fair justice, substantial violation of criminal procedure law, incorrect application of the criminal law and directed, according to these persons to carry out the purposes of criminal proceedings, but objectively preventing their achievement.

Scholars, who study the problems of errors in criminal proceedings, offer different variants of their **classification**. In the error theory their classification is an important element, as it allows to see the diversity of such a phenomenon as error and their logical interdependence that, ultimately, is of great importance for prediction, detection, elimination and prevention of errors made by persons conducting criminal proceedings.

It is obvious that classification of investigative and judicial errors by different researchers of this phenomenon could be made on different foundations.

First of all, we represent the basic, in our opinion, classification of the investigative and judicial errors, which is associated with the substantial essence of the entire diversity of these errors and their structure.

1. Errors manifested in incompleteness, one-sidedness and biased approach in the study of the circumstances of a criminal case;

2. Errors, manifested in non-observance of constitutional rights and freedoms of man and citizen in the criminal process, as well as international (primarily European) standards of criminal legal proceedings (fair justice);

3. Errors, manifested in substantial violations of the criminal procedural law;

4. Errors, manifested in incorrect application of the criminal law.

Subsequent classifications of errors help to study them from various angles to apply criminal procedural mechanisms for their prediction, detection, elimination and prevention selectively to each of the kinds of errors.

Modern realia of the criminal procedure activity prompted us to separation and study of a new cluster of errors that have been identified as **fundamental**[20].

Legislation development found its vector in rejecting the category of fundamental criminal procedure violations. But we, however, by analogy with the concept of fundamental criminal procedure violations, believe it possible to introduce the concept of fundamental error in criminal proceedings into scientific and practical use, as the cost of various errors for person, society and state is different. And where the cost of error for person, society and state is so great, it makes sense, in our opinion, to talk about fundamental character of error, which implies high level of attention of researchers and law enforcers and a special criminal procedure mechanism of their prediction, detection, elimination and prevention.

In our view, **fundamental error** is non-criminal actions of persons, conducting the preliminary investigation and court proceedings of a criminal case that caused significant violations of the legitimate rights and interests of individuals, society and the state in criminal proceedings:

1. Non identified by the persons, conducting preliminary investigation and court proceedings of a criminal case, application by the officials of the criminal justice system (primarily operating officers of the "power structures") illegal and unauthorized violence (first of all – tortures and

physical violence) in relation to the suspected persons, suspects and accused persons to obtain their confessions about the crime;

2. Non identified by the persons, conducting preliminary investigation and court proceedings of a criminal case, application by the officials of the criminal justice system (primarily operating officers of the "power structures") provocations of crime manifestation in respect to the suspected persons;

3. Errors made by the persons, conducting preliminary investigation and court proceedings of a criminal case, in collection, verification and evaluation of evidence of a criminal case; incorrect application of substantive law (errors in the substantive law application) by these persons, primarily incorrect process labelling ("labelling with a stock", "overestimated labelling", etc.), whereby a suspect or an accused person is illegally taken (not taken) into custody, is illegally held (not held) in custody, is illegally convicted (not convicted) to the real term of deprivation.

The phenomenon of error in criminal proceedings is closely connected with the **criminal and political processes** in a country. Errors in the criminal procedure activity of the state officials, as well as crimes they commit in service and other crimes, have negative impact on the implementation of the state policy in the field of criminal justice. Accordingly, among state and political actions there are a lot of those which are aimed at the localization of errors and crimes of persons, conducting criminal proceedings to ensure the proper mode of legitimacy in the process of administration of justice in criminal cases.

Criminal policy, as a part of state policy and legal policy, contributes to the "effective provision of social security and national security[21]", represents the unity of the six components: criminal law, criminal preventive, criminal investigative, criminal procedural, penal enforcement and criminal organizational. Contemporary criminal policy in the strategic aspect is characterized by such features as humanization of the criminal process, increase in legal security of an individual; the search for the optimal balance between the interests of preserving the privacy of citizens and the fight against crime; strict compliance to legitimacy in the course of law enforcement criminal procedure activity; democratization of criminal procedure measures of crime prevention; differentiation of the criminal procedure forms; improving organization of the law enforcement system, optimal distribution of the procedure laws and obligations between them; improving the rules of evidence; use of universal values and achievements of the world civilization[22] in criminal proceedings.

However, criminal and political strategies are not only criminal procedure activity, but merely vectors and trends of this activity. Therefore, they may be entirely referred to as general criminal political strategies. These strategies have their own goals, objectives, principles, etc. But implementation of these general strategies involves certain processual mechanism that can be run through implementation of particular criminal-political strategies, oriented to a narrow range of objectives in the course of criminal proceedings. In particular strategies goals, objectives, principles, etc., defined in the general criminal-political strategies, are specified. But in general, criminal-political, as well as any strategic complex should not be uncoordinated.

N.G. Stoiko was the first one who spoke about the strategies applied to the models of criminal proceedings in criminal procedure law. According to him, the models of criminal proceedings can be combined within the frames of six criminal procedure strategies (general models): 1) protection of rights and freedoms of the accused; 2) criminal proceedings; 3) social

support for the accused; 4) social support for the victim; 5) rationality and effectiveness of criminal legal proceedings; 6) reconciliation[23].

The strategies under consideration are referred to as general political, indicating contemporary prospect of criminal policy development in the administration of justice in criminal cases.

Within the context of the considered problem of errors in the criminal legal proceeding two general strategies allocated by N.G. Stoiko are of paramount interest to us: criminal indictment and protection of the rights and freedoms of the accused.

According to N.G. Stoiko, the strategy of criminal indictment involves crime control model, where the purpose of criminal process in this strategy is punishment, and the function is establishment of criminal relations. This strategy is connected with the role of the criminal justice system in reduction, prevention and suppression of crime by prosecution and punishment of the responsible. Police and intelligence agencies, investigation and prosecutor's office are responsible to society for ensuring guilty persons come to trial, they provide inevitability of criminal repression, they control crime, protect citizens, society and the state by reducing crime.

In the modern period a strategy of criminal indictment in Russia is connected primarily with periodically announced "campaigns": fight against terrorism, extremism and drug trafficking; corruption; torture in police (it was preceded by the fight with the "rogue policemen"); fight against pedophiles and maniacs; drunken drivers, drunken hooligan air passengers; etc.

Some provisions of law were straightened for these "campaigns". And, from our point of view, it becomes evident that implementation of this strategy of criminal indictment increases the number of investigative and judicial errors.

And the strategy to protect rights and freedoms of the accused, according to N.G. Stoiko, is expressed in the model of proper justice and close to it models of reconciling the interests of the state and the accused. Accordingly, a goal that this strategy expresses is justice (procedural and substantive); the function which it imposes to the criminal justice authorities is ensure protection of rights and freedoms of the accused.

In the process of implementation of this strategy in the criminal process, making decision in a criminal case under conditions of impartiality, respect for the rights and freedoms of man and citizen, tactfulness to all the parties and as full as possible awareness about the subject of a legal dispute are of prime importance.

This strategy gives preference to procedural fairness and interests of the accused by limiting state power and reducing its effectiveness. Arbitrary, unregulated use of power in criminal proceedings is the worst evil than failure to ensure the inevitability of conviction and punishment for each criminal. That is why any accused is entitled to and can count on rightful (fair) trial of his/her case, and in case of ascertainment of guilt – on the commensurate punishment that reflects the seriousness of offense, censure it deserved, as well as the harm caused to the victim[24].

In our opinion, the strategy under consideration minimizes the number of errors made by the persons conducting criminal proceedings.

General criminal-political strategies are important elements of the coordinated criminal policy. Characteristics of the general criminal political strategies are set permanently by the objectives and principles of criminal proceedings, as well as by the current political and ideological goals that are formulated by the governmental agencies of the state. Presence of general criminal-political strategies to ensure legitimacy in the process of criminal justice

administration supposes functioning of definite criminal procedural mechanisms for the criminal justice system. Coordinated activity of criminal procedure mechanisms gives possibility for effective prediction, detection, elimination and prevention of investigative and judicial errors in criminal procedure.

In criminal procedure activity two very important processes are of paramount importance: evidence and qualification of an act. In reality, different kinds of deviations, which distort the true nature of the conducted activities creep into the processes of evidence and qualification, as well as in closely related to the criminal procedure activity operative investigation activity, in forensics, psychological and expert support of criminal procedure activity.

Such deviations can also be identified both as criminal manifestations in the field of criminal procedure activity, and as errors that are not inherently socially dangerous acts.

If we talk about errors in evidence, and to some extent also in operational and investigative, forensic, psychological and expert fields, the variation in the course of all these processes generate incompleteness, one-sidedness and partiality in substantiation and investigation of all the circumstances, within the fact in proof[25]; deviations in providing procedural forms generate violations of the established national and international standards of justice.

Deviations that crept into the process of qualification of socially dangerous act lead to substantive errors related to the incorrect application of the criminal law.

Thus, in the process of implementation in the "normal functioning mode" the evidence and the related to it processes, as well as processes of qualification, it is important to "keep ready" the mechanisms related to prediction, detection, elimination and prevention of errors made by the persons, who carry out criminal process in criminal proceedings.

And to ensure that criminal proceedings has fulfilled its purpose and fundamental principles of the criminal process found their real embodiment in criminal procedure activity, it is important to study a rather specific process of prediction, detection, elimination and prevention of errors during the investigation and court hearing of criminal cases.

Studying the problems of errors in the field of practical jurisprudence we consistently use such steady legal conceptions as "prediction", "detection", "elimination" and "prevention" of errors as a characteristic of the methods of work with them.

Prediction of errors is mental and organizational activity of the persons, conducting criminal proceedings, and other participants of criminal proceedings, aimed at the analysis of the criminal procedure situation in which errors can be made with the purpose of early anticipation, detection and correction.

Detection of error involves finding, establishment and recognition of errors by the persons conducting criminal process and the other participants of criminal legal proceedings through criminal procedure activity methods.

Elimination of errors is their correction, liquidation and localization by the persons conducting criminal proceedings, using the methods of criminal procedure activity.

Prevention of errors is preventive (organizational and procedure) activity of the persons conducting criminal proceedings in the course of detection and elimination of errors (general and specific prevention) aimed at avoidance of errors in the future.

Procedures of criminal procedure activity, which involves the mechanism of prediction, detection, elimination and prevention of errors include self-inspection activity of the

persons conducting criminal proceedings (self-control, self-reflection, "errors corrections", etc.); functioning of the procedure institutions of judicial control (at the pretrial stages of proceedings), judicial review – inspection (in the court of first instance and at the stage of the sentence execution), judicial supervision – inspection (in appeal, cassation, supervisory authority and in the procedure based on the new and newly discovered circumstances), institute of prosecutorial supervision and institutional control; implementation by a lawyer or other persons the authority of protection and representation; etc.

Criminal procedure mechanism of judicial review, prosecutorial supervision, institutional controls, as well as self-inspection activity of the persons conducting criminal proceedings, are based on the methods of prediction, detection, elimination and prevention of errors.

Criminal procedure mechanism of criminal proceedings on merits, appeal, cassation, supervision and procedure, based on the new and newly discovered circumstances and execution of sentence are also built on the methods of prediction, detection, elimination and prevention of errors.

If, for example, consider the procedure of criminal proceedings in details, the same criminal procedure mechanism of returning a criminal case by the court to the prosecutor for the removal of obstacles to its hearing is built on the methods to elimination and prevention of errors.

Thus, prediction, detection, elimination and prevention of errors are the fundamental (basic) elements of the procedure mechanism of dealing with investigative and judicial errors in criminal proceedings.

When we talk about the legal mechanism, we always have the relationship and interaction of its constituent elements[26] in mind. Criminal procedure mechanism of dealing with investigative and judicial errors is taken in its unity the system of legal means (legal provisions, legal relations, legally significant decisions and statutory acts, legal awareness of the persons conducting criminal proceedings, and their legal culture, etc.), by the means of which the impact on criminal procedure relations that arise in the process of prediction, detection, elimination and prevention of errors in order to meet the purposes of criminal proceedings and following the principle of its legitimacy is made.

Criminal procedure mechanism that determines the process of prediction, detection, elimination and prevention of errors in criminal proceedings can be represented as functionally interrelated total of heterogeneous means. These means act as sub-systems that ensure the achievement of independent sub-goals, without the overall result – legitimate, substantiative and fair justice is unachievable.

The following seem possible to include to a number of such sub-systems: the subsystem of *organizational means* to ensure prediction, detection, elimination and prevention of errors in criminal proceedings; the subsystem of *legal means* to ensure the process of prediction, detection, elimination and prevention of errors in criminal proceedings; the subsystem of *the means of information-cognitive and constructive activity* for prediction, detection, elimination and prevention of errors; the subsystem of *material and technical (economic) means* to facilitate the process of prediction, detection, elimination and prevention of errors in criminal proceedings; the subsystem of *moral and ethical and professional-educational means* to ensure the process of prediction, detection, elimination and prevention of errors in criminal proceedings.

The aforementioned gave us a possibility to make a coordinated set of **criminal procedure mechanisms** (essentially cases, specific *criminal procedure strategies*) of the process of prediction, detection, elimination and prevention of errors:

1. Criminal procedure mechanism that regulates self-control, making of procedure decisions and the use of admissible evidence in the activity of persons conducting criminal proceedings for prediction, detection, elimination and prevention of errors.

2. Criminal procedure mechanism of assistance in criminal proceedings for prediction, detection, elimination and prevention of errors.

Criminal procedure mechanism of assistance in criminal proceedings in the context of the process of prediction, detection, elimination and prevention of errors include, from our point of view, activity of the participants of criminal proceedings, and other individuals in contact with the proceedings, who are not endowed by the legislator with authoritative powers in criminal proceedings. Therefore, we are talking about the activity of the attorney, the private investigator, as well as the interested parties – the accused, the victim, the civil plaintiff, the civil defendant, the legal representative of the juvenile accused, the legal representative of the juvenile victim, etc.

3. Criminal procedure mechanism of authoritative supervisory and control activity on prediction, detection, elimination and prevention of errors in the pre-trial stages of the criminal proceedings.

In theory and in practice, one of the main tools in prediction, detection, elimination and prevention of errors in the pre-trial stages is classically considered to be the supervisory and control activity of the prosecutor, the judge, the head of the investigative body, the chief of department of inquiry and the head of the body of inquiry.

This activity includes *organizational components* (operation of the arranged structures in the system of the prosecutor's office, court, investigation and inquiry) and the *procedure mechanism* of prosecutor's supervision, judicial and institutional control.

The legislator in the recent decades is improving criminal procedure mechanism of supervisory and control activities. The genesis of this activity development looks as follows: from the sovereignty of the prosecutor during preliminary investigation to introduction of the appeal procedures of detention on suspicion of committing a crime, imprisonment of a person and prolongation of imprisonment, and then full transition to the judicial control over the actions and the decisions of the inquiry officer, the investigator, their departmental leaders and the prosecutor who infringe on the constitutionally protected rights and freedoms of man and citizen; from the appearance of the procedural figure of the head of the investigation department to formation of an omnipotent departmental (procedural) controller represented by the head of the investigative body to who almost all the significant procedural powers, which once belonged to the prosecutor were delegated; currently ongoing return of some significant procedure powers of the prosecutor that originally belonged to him/her, in surveillance of the decisions made by the investigators (for example, in the case of refusal to initiate criminal proceedings or its initiation; termination or suspension on a criminal case).

Thus, organizational and procedure schemes of judicial review, prosecutorial supervision and institutional control at the moment appear different than in the days of the Code of Criminal Procedure of the RSFSR and in the early years of the Russian Federation Code of Criminal Procedure functioning. Increasing the efficiency of supervision and control procedures to achieve the goals of criminal proceedings, in particular – to improve institutional and procedure mechanism for prediction, detection, elimination and prevention of errors that are made in the process of carrying out preliminary investigation on criminal cases are among the strategic objectives of these changes.

4. Criminal procedure mechanism of judicial review (inspection and supervision) on prediction, identification, elimination and prevention of errors at the trial stages of criminal proceedings.

An important tool in prediction, detection, elimination and prevention of errors at the trial stages is commonly believed to be revision activity of courts in scheduling trial, especially during preliminary hearings of a criminal case, when considering the merits of the case in the court of the first instance, in the case of appeal, cassation and supervisory reconsideration of a criminal case, when considering issues related to the enforcement of sentences and other court decisions in court, as well as procedure activity of the competent bodies on new and newly discovered circumstances.

This activity also includes *organizational components* (primarily, functioning of the arranged court instances) and *procedure mechanism* of the procedure inspection by consideration of a criminal case on the merits in the appeal, cassation and supervision, as well as through the procedures of executive proceedings and proceedings on the basis of new and newly discovered circumstances.

The legislator in the past decades is significantly improving the mechanism of procedure (primarily judicial) inspection. The stage of commitment for trial is transformed into a stage of the court session scheduling with the modernized mechanism of preliminary hearings of a case; a special trial procedure has widespread; the procedures of appeal, cassation and supervision has been radically modified; the procedures for proceedings on the basis of new and newly discovered circumstances and enforcement proceedings on a criminal case are being improved.

Consequently, organizational and procedure schemes of consideration of a criminal case on the merits in the appeal, cassation and supervising instances, as well as through the procedures of executive proceedings and proceedings on the basis of new and newly discovered circumstances, the execution of sentences and other judicial decisions at the moment again appear different than in the days of the Code of Criminal Procedure of the RSFSR and in the early years of the Russian Federation Code of Criminal Procedure functioning. And again, increasing the efficiency of supervision and control procedures to achieve the goals of criminal proceedings, in particular – to improve institutional and procedure mechanism for prediction, detection, elimination and prevention of errors that were made in the process of carrying out preliminary investigation on criminal cases, as well as made in the process of passage of the criminal case through court proceedings are among the strategic objectives of these changes.

The intention to minimize errors made in criminal procedure activity obliges the researcher to consider the causes of these errors[27].

In our opinion, the most complete, logical, scientifically based characteristic of investigative errors is given the in the studies conducted in the 80s by the processualist scholars from the Research Institute of the Prosecutor General of the Russian Federation who classified all the diversity of these reasons:

immediate causes that characterize problems in the investigation of specific cases (*the first level of causes*);

the causes of investigative errors related to the investigator's activity: the personality of the investigator (subjective reasons), and the conditions in which the activity takes place (objective reasons). These subjective and objective causes formed *the second level of causes*, or "causes of the causes of the first level";

factors that determine the causes of the first and second levels and connected with the

conditions of the preliminary investigation activities in Russia in general (*the third level of causes*).

The classification of the causes for errors according to the scheme "case – investigator – investigative branch" contributes to their thorough study, and, most importantly to scientifically-based recommendations to neutralize the effect of these causes.

A study conducted in the late 80s – early 90s by the Research Institute of the Prosecutor General of the Russian Federation investigating the causes of errors is still relevant. Moreover, the same scheme "the case – the judge – the judicial system" can and should, in our view, be used to consider and analyze judicial errors.

Thus, we studied significant characteristics of the theoretical model of investigative and judicial errors in criminal proceedings. Coherent theory of these errors will be the subject of scientific research of more than one generation of legal scholars.

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1 It is the term "incompleteness" that is used in Article 221 of the Russian Federation Code of Criminal Procedure to define errors of the preliminary investigation detected by the prosecutor.

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Вопросы теории следственных и судебных ошибок в уголовном судопроизводстве

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В научной статье автор с позиций теории дает понятие следственной и судебной ошибки в уголовном судопроизводстве и их причин, предлагает основную, сущностную, классификацию этих ошибок, а также выделяет новый кластер ошибок – фундаментальных. Используя уголовно-политический подход, автор рассматривает общие и частные стратегии в контексте механизма прогнозирования, выявления, устранения и предупреждения следственных и судебных ошибок в уголовно-процессуальной деятельности.

Ключевые слова: следственная ошибка, судебная ошибка, фундаментальная ошибка, уголовно-политические стратегии, уголовно-процессуальный механизм прогнозирования, выявления, устранения и предупреждения ошибок, причины ошибок.

Научная специальность: 12.00.00 – юридические науки.