ПРАВО

УДК 343.14

DOI: https://doi.org/10.32886/instzak.2022.02.01

Akhpanov Arstan N.,
Professor of the Department
of Criminal Law Disciplines
of the L.N. Gumilyov Eurasian National University,
Doctor of Law, Professor, Honored Worker of the Ministry
of Internal Affairs of the Republic of Kazakhstan
ORCID 0000-0003-3256-8875
ahpanov_a@mail.ru

Khan Alexander L.,
Professor of the Department of Legal Disciplines
of the «Bolashak» Academy (Karaganda),
Candidate of Legal Sciences, Associate Professor
ORCID 0000-0001-9927-9678
kaforp@mail.ru

PRE-JUDICIAL INVESTIGATION IN THE REPUBLIC OF KAZAKHSTAN: IN SEARCH OF A MODEL OF LEGAL PROCEEDINGS

Abstract

The purpose of the article *is to substantiate the position of the authors in the context of the modernization of pre-trial proceedings in the Republic of Kazakhstan.*

The scientific novelty *lies in a comprehensive legal analysis of the modernized criminal procedure legislation of the Republic of Kazakhstan, which improves the procedures of pre-trial proceedings.*

Conclusions. *Changing the vector of development of pre-trial proceedings in the Republic of Kazakhstan by introducing a three-tier model with delimitation of powers and areas of responsibility between law enforcement agencies, the prosecutor's office and the court, necessitated the introduction of amendments and additions to the current criminal procedure legislation. Taking into account the importance of the preliminary investigation stage in the Continental type of the criminal process structure, the main emphasis is on improving the procedures of pre-trial proceedings. First of all, this affected the functional purpose of its main participants in power: prosecutor, investigator, interrogating officer and the forms of ending the investigation arising from this. The authors of the article carried out a legal analysis of the amendments and additions made to the Code of Criminal Procedure of the Republic of Kazakhstan, considered the possible consequences of their implementation, substantiated their own position on the novelties of the legislator.*

At the same time, it should be noted that the introduction of changes and additions to the judicial stages stabilized many judicial procedures and, in general, increased the authority of the judiciary.

Key words: *pre-judicial investigation, prosecutor, investigating judge, investigator, interrogating officer, prosecution, functions, procedural form.*

Ахпанов Арстан Нокешевич,
професор кафедри кримінально-правових дисциплін
Євразійського національного університету
ім. Л.М. Гумільова,
доктор юридичних наук, професор, заслужений
працівник МВС РК
ORCID 0000-0003-3256-8875
ahpanov_a@mail.ru

Хан Олександр Леонідович,
професор кафедри юридичних дисциплін
Академії «Болашак» (м. Караганда),
кандидат юридичних наук, доцент
ORCID 0000-0001-9927-9678
kaforp@mail.ru

ДОСУДОВЕ РОЗСЛІДУВАННЯ В РЕСПУБЛІЦІ КАЗАХСТАН: У ПОШУКАХ МОДЕЛЕЙ СУДОЧИНСТВА

Анотація

Метою статті *є обґрунтування позиції авторів у контексті модернізації досудового провадження в Республіці Казахстан.*

Наукова новизна *полягає в комплексному правовому аналізі модернізованого кримінально-процесуального законодавства РК, що вдосконалює процедури досудового провадження.*

Висновки. *Зміна вектору розвитку досудового провадження в Республіці Казахстан шляхом запровадження триланкової моделі з розмежуванням повноважень і зон відповідальності між правоохоронними органами, прокуратурою і судом зумовили необхідність внесення змін і доповнень до чинного кримінально-процесуального законодавства. З урахуванням значимості стадії попереднього розслідування в конструкції кримінального процесу континентального типу, основний наголос зроблено на удосконаленні процедур досудового провадження. В першу чергу, це торкнулося функціональної приналежності основних його владних учасників: прокурора, слідчого, дізнавача, а також відповідних форм закінчення розслідування. Авторами статті здійснено правових аналіз внесених змін і доповнень до Кримінального процесуального кодексу Республіки Казахстан, розглянуті можливі наслідки їх реалізації, обґрунтовано власну позицію стосовно новел законодавця.*

Одночасно необхідно відмітити, що внесення змін та доповнень у судові стадії стабілізувало багато судових процедур і, в цілому, підвищило авторитет судової влади.

Ключові слова: *досудове розслідування, прокурор, слідчий суддя, слідчий, дізнавач, звинувачення, функції, процесуальна форма.*

Introduction. Amendments and additions have been made to the criminal proceedings of the Republic of Kazakhstan radically changed the legal approaches to the construction of pre-trial proceedings and the functional purpose of its participants as part of the introduction of a three-tier model with delineation of powers and responsibilities between law enforcement agencies, the prosecutor's office and the court. In this regard, the problem of theoretical substantiation of the legislator novels and understanding of the possible consequences of the direction chosen by him for the entire Kazakhstani legal proceedings as a whole is actualized.

The purpose of the article is to substantiate the position of the authors in the context of the modernization of pre-trial proceedings in the Republic of Kazakhstan.

Analysis of studies and publications. The works of such well-known proceduralists as I. Ya. Foinitsky, P. I. Lyublinsky, A. F. Cony, N. A. Kolokolov, L. V. Piyuk, A. V. Smirnov, V. T. Tomin, Yu. A Tsvetkov and others were devoted to the issues of optimizing the procedures of the criminal process and choosing its proper model (type). Among the Kazakh scientists, it should be highlighted A. N. Akhpanov, M. Ch. Kogamov, S. G. Pen, G. J. Suleimenov, A. L. Han and others.

Main part. On December 27, 2021, by the Law No. 88-VII, the Criminal Procedure Code of the Republic of Kazakhstan again underwent a radical reform, which changed the general theoretical approaches that previously prevailed in the construction of domestic legal proceedings within the frames of the Continental law system [1]. We assume that legislative novelties are due to the search for a proper model of the criminal process that best meets the interests of society, the state and each of its citizens, since the implementation of legal

proceedings and the administration of criminal justice is a purely state function that protects citizens from illegal influences. At the same time, we share the point of view of L. V. Piyuk that any reform of criminal proceedings, no matter in which state it is carried out, is possible only up to certain limits and the reform of national legal proceedings is possible only up to a certain limit (until the type of criminal process itself is revised). It should not affect the fundamental provisions of the process, its typical design, violate the integrity of its parts and their balance [2]. Based on this opinion, we have made an attempt to analyze the changes and additions made, to answer the logical question: what type (model) of legal proceedings is the Kazakh legislator inclined to and has it generated a «hybrid» consisting of inconsistent provisions inherent in different types of process?

It is generally accepted that the framework of legal proceedings in the Continental procedural law is the stage of preliminary investigation (pre-trial proceedings), during which initial, in the public domain evidence is collected, which subsequently transforms into forensic evidence, which forms the basis of the verdict [3; 4; 5]. Therefore, it is not surprising that most of the changes and additions made have affected precisely the stage of pre-trial investigation and legal relations arising among its participants.

The first thing that catches the eye is the change in the competence of the subjects with power in the investigation, which determined the content of the investigative activity and its result. In accordance with the disposition of Part 1 Art. 58 of the Code of Criminal Procedure of the Republic of Kazakhstan «... a prosecutor is an official who, within the limits of his competence, supervises the legality of operational-search activities, inquiries, investigations and court decisions, *as well as on behalf of the state criminal prosecution at all stages of the criminal process (highlighted by us)* and other powers in accordance with Article 83 of the Constitution of the Republic of Kazakhstan and with this Code…». Does this mean that in addition to the supervisory function, the prosecutor is also assigned an investigative function (clause 22, article 7 of the Code of Criminal Procedure of the Republic of Kazakhstan)? And if he, on behalf of the state, carries out criminal prosecution in the pre-trial stages, then what is the purpose of the investigator and interrogating officer as officials of the criminal prosecution bodies (clause 23, article 7 of the Code of Criminal Procedure of the Republic of Kazakhstan)? Apparently, they should be considered as assistant prosecutors (persons assisting in the investigation, but not endowed with an independent prosecution function). Consequently, the prosecutor, being the only bearer of the prosecution function on behalf of the state in the pre-trial investigation, each of his final decisions must begin with the words: «In the name of the Republic of Kazakhstan, etc.?». For comparison: in the USA, the accusation is formulated by the court during the interrogation of the accused brought to court and therefore the court, as the third branch of power, begins official criminal prosecution and the verdict is pronounced on behalf of the state (for example, the State of Arizona against Miranda, the USA against Katz, etc.). The prosecutor, however, acts as a representative of the state as an accuser in opposition to the defense, acting on behalf of a private person, and the decision of the question of guilt is the business of the jury, acting on behalf of the people. This creates a balance of balance between public, private and public interest [6].

On the other hand, the prosecutor participates in the consideration of the criminal case by the court as a representative of the interests of the state by supporting the prosecution and is the public prosecutor (which follows from the last paragraph of this part and paragraph 23 of article 7 of the Code of Criminal Procedure). Isn't this a contradiction, entailing a confusion of prosecutorial and judicial functions, since, based on the meaning of the disposition of paragraph 1 of Art. 396 of the Code of Criminal Procedure, only the court can make decisions on behalf of the state, while the rule under consideration establishes that the prosecutor carries out criminal prosecution on behalf of the state at all stages of the process. If we follow this logic, then the prosecutor must approve the guilty verdict of the court, i.e. close the top of the third branch of power.

As a result, it can be concluded that, starting from January 2022, the functions of the prosecutor had been significantly expanded and now they can be divided into four types:

- the function of supervision of legality at all stages of the criminal process, i.e. for the

execution of the prescriptions of laws by all subjects of emerging legal relations (issuance of legal restoration acts or other acts of prosecutorial response: protests, resolutions, etc.), but not the substitution of these subjects;

- the function of procedural administration in the pre-trial stages (studying the case and giving instructions on the conduct of procedural actions, changing jurisdiction, setting a reasonable time limit, removing from the investigation and transferring the criminal case to another body or official; considering complaints of participants in the investigation);

- investigative function in the pre-trial stages (accepting a case for its proceedings, investigation of the case, refusal of charges or dismissal of the case, drawing up an indictment);

- the function of the discretion of the prosecutor on behalf of the state in the pre-trial and judicial stages (approval, approval of the decisions of the investigator and interrogating officer or refusal to do so, conclusion of a procedural agreement).

Involuntarily, the words of James Madison come to mind, who noted in the 47th essay of the Federalist Notes that «... the concentration of all power – legislative, executive and judicial – in one hand, regardless of whether it is granted to one person or many, according to inheritance, appointment or election, can rightfully be defined by the word «tyranny» ...» [7]. Concerning the procedural status of the investigator (inquirer), taking into account the fact that in cases under the investigator's authority, the investigator is deprived of the right to independently make final procedural decisions and is only responsible for observing procedures related to the collection and consolidation of evidence (with simultaneous personal responsibility for the course and results of the investigation conducted under the leadership of the prosecutor in the criminal case being processed by him) – it can be stated that the issue related to the procedural autonomy (independence) of the investigator has finally the point is made: the investigator led by the prosecutor is a «switchman», answering regardless of guilt for all litigation mistakes. This conclusion is also confirmed in the norm that determines the status of a suspect (clause 1-1 of part 1 of article 64 of the Code of Criminal Procedure), which provides that «... in cases of urgency, the person conducting the pre-trial investigation has the right to issue decision to recognize a person as a suspect and interrogate him/her ..., with the immediate direction to the prosecutor of a decision on recognizing the person as a suspect for approval. The decision is accompanied by the materials of the criminal case and the protocol of the interrogation of the person as a suspect…». On the one hand, the organizational gap has been eliminated with the uncertainty of the status of the suspect due to the workload (sluggishness) of the prosecutor. On the other hand, Article 202 of the Criminal Procedure Code of the Republic of Kazakhstan provides that in case of refusal to agree on a decision to recognize a person as a suspect, the prosecutor issues a reasoned decision, in which he simultaneously recognizes the interrogation inadmissible as evidence, what informs the suspect. Disciplinary proceedings are initiated against the investigator, and the suspect acquires an inalienable right to compensation for harm caused through the fault of the investigator. And the victim? As always: «with a broken trough ...». There is a question: will the investigator, even in cases of urgent delay, take the risk of detaining and interrogating the suspect if the prosecutor disagrees, even during subsequent urgent investigative actions confirming his conclusion, negative consequences will occur? It is easier to formally comply with the procedure, without thinking about the judicial perspective, justice, morality and conscience, calmly moving the criminal case to the unsolved folder. Apparently, the words of Prof. V. T. Tomin: «... I will not call an investigator or an operative worker immoral if, in order to expose the suspect, he misleads him (it will be unethical if the investigator lies directly). I will call the activities of an investigator or an operational commissioner immoral if they do not expose criminals, if they are not able to do this under the influence of non-specific ethics ...» [8] have already lost their relevance.

In this regard, it would be reasonable to supplement Part 3 of Art. 60 of the Code of Criminal Procedure of the Republic of Kazakhstan with the provision that «... the investigator, at the direction (with the consent) of the prosecutor, has the right to carry out criminal prosecution ... by qualifying the suspect's act agreed with the prosecutor ...» and further in the text. Otherwise, it will contradict the norms on the powers of the prosecutor

and give rise to the assumption that this norm allows the investigator (inquirer) to exceed the functions assigned to him on completely legal grounds.

The issue of location of the accused in the process of pre-trial investigation (Article 62 of the Code of Criminal Procedure of the Republic of Kazakhstan) also remained open, if the moment of establishing his status is the actions of the prosecutor on the completed criminal case (Article 65 of the Code of Criminal Procedure of the Republic of Kazakhstan), further progress of which is possible only in the judicial stages.

Now about the procedures of pre-trial investigation.

Part 6 Article 189 of the Code of Criminal Procedure of the Republic of Kazakhstan on the forms of pre-trial investigation, an addition was made that pre-trial investigation in protocol form is carried out by the criminal prosecution body for criminal offenses, as well as for cases of accelerated pre-trial investigation and cases of inquiry. Accordingly, a new wording was given to the concept of «protocol» – paragraph 54 of Art. 7 of the Code of Criminal Procedure of the Republic of Kazakhstan and appropriate amendments were made to Art. 190, 192-2, 527 Code of Criminal Procedure of the Republic of Kazakhstan. As a result of the unification of the norms, the specific classification of the forms of pre-trial investigation in the form of a preliminary investigation and inquiry into ordinary and accelerated proceedings has been excluded. Instead, a single simplified pre-trial proceeding appears, including:

- protocol form for criminal offenses;
- accelerated pre-trial investigation in minor or moderate cases, as well as serious crimes;
- ending with the conclusion of a procedural agreement on the admission of guilt.

General criteria for classifying criminal offenses as summary proceedings have been developed: evidence, lack of opposition, active repentance.

On the other hand, despite the detailed regulation of the simplified pre-trial investigation (parts 4-1, 4-2, 4-3 of Article 190 of the Criminal Procedure Code of the Republic of Kazakhstan), the problems remain the same: the initial moment is determined by the investigator due to the uncertainty of the initial stage associated with determining the complexity of the investigation and rests on 15 days; the return of the case by the prosecutor does not entail negative consequences for the investigator (parts 7, 8 of article 190 of the Code of Criminal Procedure of the Republic of Kazakhstan). Conclusion: the possibility of a corruption component remains.

In relation to the inquiry, a truncated subject of proof was introduced (Article 192-1 of the Code of Criminal Procedure of the Republic of Kazakhstan). Meanwhile, both the disposition of part 1 and the disposition of part 2 of the mentioned norm contain such concepts as «and other circumstances relevant to the case» and «other necessary investigative actions». Does this mean that the completeness and comprehensiveness of the investigation remain the general conditions for conducting an inquiry? It would be more reasonable to point out that «... in cases where it is necessary to establish the completeness of the investigation, when it is impossible to establish the truth in the case without this, the investigator has the right to carry out other procedural or investigative actions». Thus, designate the exclusivity of inquiry as a simplified form of investigation.

The inquiry ends, in contrast to the preliminary investigation, with the preparation of a prosecution protocol (Article 192-2 of the Code of Criminal Procedure of the Republic of Kazakhstan).

Amendments and additions have been made to Art. 192 of the Code of Criminal Procedure of the Republic of Kazakhstan, as a result of which the powers of the prosecutor to establish a reasonable time limit were strengthened, and the forms for completing the pre-trial investigation were determined:

- a decision to dismiss the case;
- a report on the completion of the pre-trial investigation (clause 54, article 7 of the Code of Criminal Procedure of the Republic of Kazakhstan);
- a decision on the application of writ proceedings;
- a protocol on a criminal offense;
- protocol of accelerated pre-trial investigation;
- prosecution record;
- a decision to transfer the case to the court to consider the issue of the application of compulsory medical measures;

- a procedural agreement concluded by the prosecutor in the form of a plea deal.

The procedural agreement on cooperation is connected with the implementation of the agreement and is of a formal nature, because is not guaranteed by the state, which explains the fact that this form has fallen out of the specified list.

In addition, part 7 of Art. 192 of the Code of Criminal Procedure of the Republic of Kazakhstan removes the issue of deadlines for resumed cases in connection with the return of the case by the prosecutor for additional investigation or with the cancellation of the interruption, termination, or disagreement with the interruption or termination. In this case, the term is set by the prosecutor, but not more than one month from the moment the case is received by the person conducting the criminal prosecution. However, the question remains what to do with the resumption of the case in connection with the emergence of new circumstances requiring the production of investigative actions in unsolved cases? If in this situation the general procedure for extending the terms is in force, then efficiency is lost, especially in cases requiring the detention of a suspect. Perhaps, nevertheless, it was necessary to extend the action of the specified part to the cases resumed by the proceedings. The question remained open. As for the interruption of the terms of the pre-trial investigation, paragraph 9, part 7, Art. 45 of the Code of Criminal Procedure of the Republic of Kazakhstan, since the unambiguous interpretation of the grounds indicated in it is too vague: the appointment of an expert examination in a criminal case. It would be necessary to specify: lengthy, long term, beyond the time limits of the investigation, etc.

It is also not entirely clear the attitude of the legislator to the forms of termination in cases under investigation, preliminary investigation and inquiry. If the first ends with a report on the completion of the pre-trial investigation, and the second – with the protocol of the prosecution, does this not mean that the inquiry is the accusatory body (criminal prosecution, charges), and the investigator – in cases under his investigation – is an incriminating body, and in other cases (not representing a great public danger) – accusatory?

In American law, crimes are divided into «felonies» and «misdemeanors». The criterion for this classification is the punishment prescribed by law: felonies are crimes that are punishable by death or imprisonment for more than one year, while misdemeanors are punishable by imprisonment of up to one year with a sentence in a local prison [6, p. 451]. We believe that this procedure served as a model of reception.

Then it is clear why «bringing to trial» is excluded from the powers of the prosecutor and the burden of accusation is transferred to the judicial stages. But in American law, misdemeanors are considered solely by the judge, and if the defendant is found guilty, the process moves to the stage of sentencing. On a felony basis and in case of non-admission of guilt, trial by jury is held. Among other things, the prosecutor is endowed with the right of discretion, including by waiving charges or applying alternative to criminal punishment measures.

According to the Code of Criminal Procedure of the Republic of Kazakhstan, such procedures are not provided. The question arises, then why change the form of the end of the preliminary investigation and endow the prosecutor with an investigative function unusual for him? And what then is the procedural independence of the investigator, if he carries out all actions and decisions at the direction or with the consent of the prosecutor, and the question of guilt (accusation) is the prerogative of the prosecutor? On the other hand, if the existence of grounds for establishing the status of the accused is directly related to the actions and decisions of the prosecutor, that signify the start of official criminal prosecution, why the moment of bringing to trial is transferred to the judicial stages, and how does this correlate with the provisions that the investigator and the interrogator belong to the criminal prosecution authorities just under the condition that they are effectively deprived of the accusatory function? Wouldn't it be easier to abandon such terminology, using the general term: employee of the body of inquiry?

Questions also arise regarding the terms of detention and the procedure for their extension at the time of the end of the pre-trial investigation (part 13 of article 151 and part 7 of article 152 of the Code of Criminal Procedure

of the Republic of Kazakhstan). An application for sanctioning the period of detention of a suspect in custody for the period of examination by the prosecutor of a criminal case received with the report on the completion of the pre-trial investigation and the preparation of an indictment, shall be submitted by the prosecutor to the investigating judge no later than three days before the expiration of the period of detention.

The term for the suspect to be in custody during the period of familiarization with the materials of the criminal case, *as well as during the period of examination by the prosecutor of the criminal case received with the report on the completion of the pre-trial investigation, is determined by the investigating judge (highlighted by us)*, taking into account the scope of the criminal case, the number of persons participating in the case and other circumstances affecting the time of familiarization with the case of the suspect and his defense, as well as studying the criminal case by the prosecutor and drawing up an indictment.

We believe that the provisions of Part 13 Article 151 and Part 7 Art. 152 of the Code of Criminal Procedure of the Republic of Kazakhstan slightly inconsistent with each other, increasing the already large paperwork: the investigator petitions for authorization of the period of detention of the accused in connection with the review and preparation of the report, and then the prosecutor, having received the case, again petitions for an extension of the period of detention in connection with the study and preparation of the indictment. As a result of such «double sanctioning», it is very difficult for both the investigator and the prosecutor to carry out the functions assigned to them within the boundaries of the initial period of detention.

It would be more expedient to state part 7 of Art. 152 of the Code of Criminal Procedure of the Republic of Kazakhstan as follows:

«... The term for the suspect to be in custody during the period of familiarization with the materials of the criminal case is determined by the investigating judge, with taking into account the volume of the criminal case, the number of persons participating in the case and other circumstances affecting the time of familiarization with the case of the suspect and his defense counsel, as well as the period of study by the prosecutor of the criminal case filed with a report on the completion of the pre-trial investigation and the drafting of an indictment by him ...».

On the other hand, it is impressive that in the current wording of Art. 153 of the Code of Criminal Procedure of the Republic of Kazakhstan, the legislator clearly delimited the competences between the investigating judge (issues of restriction of the rights and freedoms of the individual – the initial sanction) and the prosecutor: compliance with the law (the existence of grounds for changing or canceling the preventive measure).

Regarding the new wording of chapters 38 and 39 of the Code of Criminal Procedure of the Republic of Kazakhstan, which regulate the procedure for compiling a report on the completion of a pre-trial investigation and the actions of the prosecutor after receiving a completed criminal case, we would like to note that the report on the completion of a pre-trial investigation will completely deprive the investigator of the initiative on cases in progress, and he would be transformed from a professional master into an artisan performer. As for the prosecutor, empowering him with an investigative function (drawing up an indictment) will entail the need to attract a lot of financial, human, material resources, which, of course, will increase the cost of legal proceedings without significantly improving the quality of the preliminary investigation. After all, when drawing up an indictment, the prosecutor has only written information from the materials of the criminal case compiled by the investigator, while a significant amount of information that remained unclaimed due to inconsistency with the procedural form, and which could form an attitude towards the accused and the entire investigation, remains outside the scope of his discretion.

We did not touch upon the changes and additions to the judicial stages, but still we would like to note that their introduction stabilized many judicial procedures and, in general, increased the authority of the judiciary.

Conclusions. Changing the vector of development of pre-trial proceedings in the Republic of Kazakhstan by introducing a three-tier model with delimitation of powers and areas of responsibility between law enforcement agencies, the prosecutor's office and the court, necessitated the introduction of amendments

and additions to the current criminal procedure legislation. Taking into account the importance of the preliminary investigation stage in the Continental type of the criminal process structure, the main emphasis is on improving the procedures of pre-trial proceedings. First of all, this affected the functional purpose of its main participants in power: prosecutor, investigator, interrogating officer and the forms of ending the investigation arising from this. The authors of the article carried out a legal analysis of the amendments and additions made to the Code of Criminal Procedure of the Republic of Kazakhstan, considered the possible consequences of their implementation, substantiated their own position on the novelties of the legislator.

It should be noted that the introduction of changes and additions to the judicial stages stabilized many judicial procedures and, in general, increased the authority of the judiciary.

References:

1. *O vnesenii izmeneniy i dopolneniy v nekotoryye zakonodatel'nyye akty Respubliki Kazakhstan po voprosam vnedreniya trekhzvennoy modeli s razgranicheniyem polnomochiy i zon otvetstvennosti mezhdu pravookhranitel'nymi organami, prokuraturoy i sudom* : Zakon Respubliki Kazakhstan ot 27 dekabrya 2021 goda № 88-VII ZRK. URL: https://adilet.zan.kz/rus/docs/Z2100000088#z498 (Last accessed: 10.01.2022) [in Russian].

2. Piyuk, L. V. (2011). *Problemy primeneniya uproshchennykh form razresheniya ugolovnykh del v sudoproizvodstve Rossiyskoy Federatsii v svete tipologii sovremennogo ugolovnogo protsessa*. Tomsk: Izd-vo Tom. un-ta,101–103 [in Russian].

3. Koni, A. F. (1967). *Sobraniye sochineniy*. M. : Yurid. lit.,. T. 4, 365–366 [in Russian].

4. Kolokolov, N. A. *V poiskakh modeli ugolovnogo protsessa: predvaritel'noye rassledovaniye – «novoye», problemy – «staryye»*. URL: http://www.consultant.ru/ (Last accessed: 10.01.2022) [in Russian].

5. Bagmet, A. M., Tsvetkov, Yu. A. (2016). Komu meshayet sledstvennaya vlast'? *Rossiyskiy sledovatel'*, 23 [in Russian].

6. Bernam, U. (2006). *Pravovaya sistema SShA*. 3-y vypusk. M., «Novaya yustitsiya» [in Russian].

7. *The Federalist Papers*. (1961) / Jacob E. Cooke ed. Wesleyan university Press, Middletown, Conn., 324.

8. Tomin, V. T., Polyakov, M. P., Popov, A. P. (2000). *Ocherki teorii effektivnogo ugolovnogo protsessa* / Pod red. prof. V. T. Tomina. Pyatigorsk, 11 [in Russian].

Стаття надійшла до редакції 15 січня 2022 р.