

SCTMG 2023
**International Scientific Conference «Social and Cultural Transformations in the Context of
Modern Globalism»**

**PROCEDURAL PECULIARITIES OF THE PRELIMINARY
INVESTIGATION CARRIED OUT BY SHIP CAPTAINS**

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Abstract

In this article, the problems of legal regulation and law enforcement in the field of implementation of urgent investigative actions by captains of sea and river vessels are considered. They relevant, first of all, due to the existence of criminal offences that were committed in places remote from the bodies engaged in preliminary investigation, as there is a high probability of loss of traces and other information of evidentiary nature. The existing law enforcement practice has been analysed, and the specifics of the application of criminal procedural legislation have been revealed. A number of identified gaps and their comprehensive analysis indicate the need to improve the current legislation in this area. Progressive solution of the existing problems, comprehensive research for the problems at the theoretical scientific level, proper technical and organisational support, and, in general, creation of conditions for the implementation of urgent procedural and forensic measures by the ship's captain, will ensure extermination of the existing problems of law enforcement practice..

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Keywords: Captain of sea and river vessel, jurisdiction, powers, problems of law enforcement, preliminary investigation, urgent investigative actions

1. Introduction

The relevance of the ongoing research is ensured, first of all, by the fact that to date the criminal procedural legislation of the Russian Federation has not resolved the issue of the legal status and place of the officials specified in Part 3 of Article 40 of the CPC RF in the system of bodies carrying out pre-trial investigation. In addition, the CPC RF in a number of cases directs them to investigative bodies and gives investigative bodies a certain competence. On the other hand, it separates them from investigative bodies, explaining that it is a completely separate institution with its own powers, different from those of investigative bodies.

This position of the legislator becomes clear when the Soviet criminal procedural legislation, which had a completely different understanding of the enquiry and, accordingly, the bodies of enquiry. Therefore, we can conclude that the officials listed in Part 3 of Article 40 of the CPC of the RF are in a stage of transition from the understanding of one to another.

This status should be changed in the direction of increasing the difference from the bodies of enquiry, i.e. to complete the evolution of the criminal-legal status. The CPC of the RF was correlated with the current Criminal Procedure Code of the Republic of Kazakhstan, where the position regarding the category of persons specified in Part 3 of Article 40 of the CPC of the RF has a final finalised version: the subjects in question belong to bodies of enquiry and can carry out enquiries in full.

2. Problem Statement

In the realities of the modern Russian criminal process, it is impossible to carry out an enquiry in full by the above officials, but we are obliged to accept the idea of completeness of the status.

The next legislative problem is that various state acts have not formed a unified approach to the understanding of officials listed in Part 3 of Article 40 of the CPC RF.

In the process of analysing the activities of captains of ships making long voyages, inconsistency and "imprecision" in the wording of provisions on merchant shipping, inland navigation and other legislative acts have been revealed (Lantseva, 2022). The leading role of the Code of Criminal Procedure of the Russian Federation should become a guiding star in the formation of the unity of the legislative approach, and only then the harmonisation in other legal acts should be achieved.

Criminal procedural legislation provides for the possibility to give long-distance captains and other officials the right to initiate, if necessary, criminal proceedings and conduct a number of urgent actions to ensure the completeness of the investigation (Golovina, 2022). By virtue of part 19 of article 40 of the CPC of the RF, urgent investigative actions should imply the actions of the investigative body, or an official performing similar functions, after the initiation of a criminal case. It must be investigated in a mandatory manner, as the priority is the need to identify and establish evidence, their detection and fixation (Semenov, 2022).

It is interesting to note that in the definition indicated by the legislator, there are no problematic aspects. And the theoretical justification of the norm in question is quite logical, as during the preliminary investigation, if there is no need for an "urgent" response, all activities are carried out within the

framework of the enquiry. (This is evidenced by the reference in Article 150 of the CPC of the RF to Chapters 21,22, 24–29 of the CPC of the RF, which are applicable in the implementation of the enquiry).

On the other hand, according to the current procedural legislation and established law enforcement practice, the officials envisaged by the legislator in Article 40(3) of the Code of Criminal Procedure of the Russian Federation are authorised to carry out only urgent investigative actions, which are possible only if the criminal case belongs to the category of cases requiring mandatory investigation.

In turn, in cases when there is no need for a preliminary investigation, the officials stipulated in Part 3 of Article 40 of the RF CCP have no instructions to carry out urgent investigative measures, and, therefore, there is no authority.

A whole block of criminal cases initiated by officials listed in part 3 of article 40 of the Code of Criminal Procedure of the Russian Federation, in which the preliminary investigation is not obligatory, has fallen out of the legislator's sight.

Therefore, for example, a case under article 228.1 of the Criminal Code "Illegal production, sale or forwarding narcotic drugs, psychotropic substances or their analogues, illegal sale or forwarding plants containing narcotic drugs or psychotropic substances or parts there of containing narcotic drugs or psychotropic substances" has been initiated by one of the officials. This was referred to in article 40, paragraph 3, of the Code of Criminal Procedure; urgent investigative actions will take place and must be carried out.

However, if the case is also initiated by the above-mentioned subjects under part 1 of Article 228 of the Criminal Code of the RF, it is impossible to carry out investigative actions, as the above-mentioned subjects are authorised to carry out only urgent investigative actions. And the status of urgent actions in this situation is lost due to the fact that in this category of cases the preliminary investigation is not necessary.

3. Research Questions

There is no problem in the performance of the criminal procedural function by the bodies of enquiry, but there is a gap in the performance of the elements of preliminary investigation by the subjects specified in paragraph 3 of Article 40 of the CCrimP of Russia.

The essence of this version is that in case of committing an offence on a ship, which is not subject to mandatory investigation by virtue of the current criminal procedural legislation, the authorised person – the captain – is not entitled to carry out the stipulated urgent actions of procedural and forensic nature. This is due to the existence of the need for a full investigation of the accident on the ship.

4. Purpose of the Study

The purpose of the study is to analyse the problems of the legal status of the captain on sea and river vessels when he performs procedural actions, endowing the latter with the powers of the bodies of inquiry and investigation and developing appropriate recommendations.

5. Research Methods

This point of view has grounds. However, the impossibility of urgent investigative actions, preliminary investigation of which is not mandatory, does not hinder the initiation of criminal proceedings by the subjects listed in part 3 of Article 40 of the CPC of the RF.

The right of shipmasters to detain persons suspected of committing an offence on board a ship where proceedings have been instituted should be recognised as an inherent criminal procedural power.

In accordance with Article 91 of the CPC of the RF, the body of enquiry has the right to detain a person suspected of committing an offence for which a penalty of deprivation of liberty may be imposed, if there are certain reasons provided for by law. The need to detain a suspected person by officials who are not always state officials and who have less power and administrative authority over a wide range of persons is inexorably increasing, all the more so in the conditions of the urgency in which their criminal-legal status begins to work.

If we consider the statement that the bodies of enquiry by virtue of the letter of the criminal procedural law include officials specified in part 3 of Article 40 of the CPC RF, including the captains of sea and river vessels, they are vested with the authority to detain a suspect. However, the CPC RF does not separately specify the category of officials in question in paragraph 1 of Article 91 of the CPC RF.

In turn, the right to arrest is indirectly confirmed by Federal Law No. 103 of 15 July 1995 "On the Detention of Suspects and Accused of a Crime". Article 7 of the analysed normative-legal act establishes the following. In cases when a person suspected of committing a crime is detained in accordance with the Code of Criminal Procedure of the Russian Federation by ship captains, the latter must ensure that detainees are properly held in specially designated premises provided for such purposes, complying with requirements for such premises.

According to part 4 of article 31 of the Criminal Code of the Russian Federation, when traces of an offence provided for by the current legislation are found and fixed on a vessel, the captain is authorised to detain a person suspected of committing such offence before handing him over to the competent authorities in the nearest port or settlement.

Focusing on the analysed case, we note that there is a certain indication in the law on the possibility of detention of suspects by the ship's captain. Analysing the norm of part 4 of Art. 4 of Article 31 of the RF CWWC, one cannot but notice that the Code itself is a federal law within the framework of water transport special, i.e. it applies to the relations specified in Article 1 of this law: to the relations arising on inland waterways.

The CPC of the RF in Article 91 systematised the grounds for criminal procedural detention of a suspect, which, according to the meaning of the procedural legislation itself, are exhaustive.

However, taking into account the existing provisions of the CPC RF, without contradicting it in substance, the CVWT RF introduces an additional regularity, extending it to the extent "not covered by" CPC RF. The captain of a vessel is obliged to detain a person suspected of committing an offence when signs of an offence provided for by the criminal legislation of the Russian Federation are detected on a vessel on a long voyage.

This rule is identical to the rule on the grounds for instituting criminal proceedings set out in Article 140 of the Code of Criminal Procedure of the Russian Federation: "The grounds for instituting criminal proceedings shall be the presence of sufficient data indicating the signs of a criminal offence".

After a comparative analysis of part 4 of Art. 4 of Art. 31 of the RF EWC and Part 2 of Art. 140 of the RF CPC, we can state that the grounds for detention under the RF EWC standard are even broader than the grounds for initiation of criminal proceedings. According to Art. 140 of the RF CPC, it indicates the need for "sufficient data indicating signs of an offence", when Part 4 of Art. 31 speaks only about the discovery of traces of an offence.

Hence, it also follows that in such case, even if there are no grounds to initiate criminal proceedings, the captain of a sea vessel on a long voyage may detain a person suspected of committing an offence. In other words, there is a situation when detention is possible before the initiation of criminal proceedings, which contradicts the provisions of the Criminal Procedural Code of the Russian Federation. This contradiction is inadmissible and should be interpreted in favour of the CPC RF, which establishes general provisions of criminal proceedings.

In its content, Part 4 of Article 31 of the Code of Inland Water Transport of the Russian Federation includes all the grounds of Part 1 of Article 91 of the CPC RF, as it is a broader norm. The presence of the grounds of Part 4 of Article 31 of the Code of Inland Water Transport of the Russian Federation in its essence does not require the presence of the grounds of Part 1 of Article 91 of the CPC RF. It precedes them.

Article 91 of the Criminal Procedure Code of the Russian Federation indicates that an inquirer, investigator, body of enquiry are vested with the right to detain a person, in the presence of certain grounds. Therefore, we are talking about the competence of detention, about the choice of the decision to detain or not to detain by an official depending on the situation and official necessity in a set of conditions established by the law of the criminal procedure.

On the contrary, Article 31(4) of the FAC of the RF points to the obligation to detain a person suspected of having committed an offence if there are grounds to do so.

Comparing the norms in the above context, we find the captain of a ship on a long voyage less independent in comparison with investigators, inquirers, the bodies of enquiry (The question of whether or not the officials specified in Part 3 of Article 40 of the CCrimP of Russia are related to the bodies of enquiry is not resolved).

On the other hand, the compulsory nature of such detention by virtue of part 4 of article 31 of the FCL of the RF is quite justified. The fact is that a vessel on a long voyage is an object isolated from the outside world, which just caused the formation of the captain of a sea or river vessel as a subject of pre-trial criminal proceedings. Separateness speaks about the isolation of all members of the ship's crew, about special conditions of concealment of traces of crime, about special conditions of influence on each other of the participants of the preliminary investigation of a criminal case. It indicates the special status of relations between the subject investigating the criminal case and other participants of criminal proceedings (Abrahamyan & Golubkina, 2019).

In particular, the suspect has a greater influence on the closed list of crew members. Such influence can be compared to the influence of questioned and non-questioned persons in the court

hearing, which gave life to part 2 of Article 264 of the RF CCP. According to it, the bailiff shall take measures to ensure that witnesses who have not been questioned by the court do not communicate with questioned witnesses, as well as with other persons in the audience room.

The next problem with detention is its duration, when the said detention is carried out by officials specified in Part 3 of Article 40 of the CPC of the RF. Within the framework of the general rule, the period of detention is 48 hours from the moment of actual detention in accordance with the Constitution of the Russian Federation. After 48 hours from the moment of detention, the suspect is subject to release, unless a preventive measure in the form of remand in custody has been chosen against him, or unless the court has extended the period of detention for 72 hours.

Meanwhile, in the case of detention by officials specified in part 3 of Article 40 of the CPC of the RF, it is usually impossible to obtain a court decision to extend the period of detention. This concerns selecting a measure of restraint in the form of remand in custody in respect of the suspect due to the impossibility of being in the places where the courts are present at the necessary time. At the same time, it is impossible to release a detained person.

Another case is when it is impossible to carry out an investigative action without a court decision, for example, to obtain information about connections between subscribers and/or subscriber devices. The same issue arises when deciding whether to remand a suspect in custody. In such case, following the letter of the CPC RF and the Constitution of the Russian Federation, it is necessary to refuse to perform such investigative and procedural actions. However, there is an opinion that for the officials specified in part 3 of Article 40 of the CPC RF, it is necessary to create special conditions for the performance of these actions without prejudice to the proof and observance of the rights and freedoms of participants in criminal proceedings (Semenov, 2022).

Therefore, it should be concluded that the legislation does not have a clear position in relation to the officials specified in Part 3 of Article 40 of the CPC RF regarding the use of detention and performance of other procedural actions. In order to resolve the contradictions in the law, it is necessary to define equal and fundamental conditions of criminal proceedings for all officials of the category in question in a separate special law or everywhere in the CPC RF.

For the captains of sea and river vessels on a long voyage, in particular, there should be defined unified beginnings for travelling on inland waterways and on external ones, on merchant vessels and on vessels for other purposes. The unified principles of detention as a separate procedural action should be defined by an additional ground, but not as broad as it is specified in the Code of Inland Waterway Transport of the Russian Federation (Pylenko & Kulikovskaya, 2022).

There is also a gap in the legislation in terms of competence to conduct investigative actions in cases where investigation is not necessary. This is also a problem in the process of law enforcement (Migda & Slitsan, 2022).

As part of the improvement of criminal procedural legislation, it is necessary to establish for officials, including captains of sea and river vessels, the possibility of carrying out necessary investigative actions, within the framework of criminal proceedings, rather than using the category of "urgent investigative actions" to fill gaps in the criminal procedure. The legislation also does not have a clear

position with regard to the officials specified in Part 3 of Article 40 of the CPC of the RF regarding the use of detention and performance of other procedural actions.

In order to resolve the contradictions in the law, it is necessary to define equal and fundamental conditions of criminal proceedings for all officials of the category in question in a separate special law or universally in the CPC of the RF.

For the captains of sea and river vessels on a long voyage, in particular, there should be unified principles for inland and external waterways, on merchant vessels and on vessels for other purposes (Boran-Keshishyan et al., 2019). The unified principles of detention as a separate procedural action should be defined by an additional ground, but not as broad as it is specified in the Code of Inland Waterway Transport of the Russian Federation.

6. Findings

Therefore, the procedural status of officials provided for in part 3 of article 40 of the CPC of the RF is not properly regulated and is in a transitional legal stage. This indicates the urgent need to form a unified approach in the legislation of the Russian Federation. The institute has no right to exist; the very need for the exercise of criminal procedural powers by these persons indicates that even in such extreme situations, human rights and freedoms must be protected.

The existence of the identified problems is due to the lack of a specialised training of sea and river vessel captains in the implementation of criminal procedures and the conduct of a number of urgent investigative actions. The vessel also often lacks technical and forensic tools that can facilitate the investigation. No less problematic is the drafting and execution of procedural documents, as this requires specialised professional knowledge, skills and abilities, including the use of special software and professional reference systems.

In order to solve the identified problems, it is advisable to develop the main provisions presented in the instructions for conducting enquiries by captains of long-distance vessels when investigating certain types of crimes committed on board during the voyage. It is necessary to ensure the availability of specialised forensic equipment on board for carrying out urgent investigative actions and to guarantee access to specialized programmes, forms of criminal procedural documents, computer programmes and the Internet.

7. Conclusion

Progressive solution of the existing problems, comprehensive research for the problems at the theoretical scientific level, proper technical and organisational support, and, in general, creation of conditions for the implementation of urgent procedural and forensic measures by the ship's captain, will ensure extermination of the existing problems of law enforcement practice.

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