

# The Concept and Meaning of the Procedural Control of the Head of an Investigative Body in Criminal Proceedings\*

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## Abstract

In the article, the authors consider the most pressing issues relating to the conceptual framework of procedural control of the head of an investigative body and its importance in pre-trial criminal proceedings. The authors distinguish the correlation between the procedural control and departmental control exercised by the head of the investigative body. The authors substantiate that the science of criminal procedure needs theoretical consolidation of the correlation between procedural and departmental control, which is correlated as the general with the particular, where procedural control is understood as a special case of departmental control. In conclusion, based on the features highlighted by the authors, the author's wording of the concept of procedural control, which should be understood as based on the norms of criminal procedure law activity of the head of the investigative authority, carried out during the pre-trial proceedings in criminal cases, to implement the purpose of criminal proceedings, identifying, eliminating and preventing violations of criminal procedure and other legislation by the investigator, subject to the limits determined by procedural independence.

**Keywords:** Investigator; Prosecutor; Departmental Control; Investigative Actions; Pre-Trial Proceedings.

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## A. INTRODUCTION

Optimising pre-trial proceedings has become a particularly pressing and relevant issue in the modern legal landscape. This stage of the criminal process plays a critical role in ensuring that justice is efficient and effective. Within this context, the procedural control exercised by the head of the investigative body has garnered significant attention from legal scholars and practitioners alike. This is because the activities of this key participant in criminal proceedings serve as an essential resource in shaping the success and efficiency of the entire pre-trial investigation. The head of the investigative body involves overseeing the procedural aspects of criminal investigations and ensuring that all investigative actions are conducted lawfully, promptly, and under established legal frameworks. Their ability to provide effective procedural control directly influences the quality and reliability of the preliminary investigation, which forms the foundation for subsequent legal proceedings. Therefore, strengthening the procedural control mechanisms and enhancing the capabilities of the head of the investigative body are critical steps toward addressing existing inefficiencies and improving the overall criminal justice system. By optimising this process, it becomes possible to achieve greater transparency, fairness, and adherence to the principles of justice during the pre-trial phase.

The powers granted to the head of an investigative body are specifically designed to ensure the conduct of a complete, comprehensive, and objective investigation into criminal cases. This role is paramount as it directly contributes to realising justice and the overall objectives of criminal proceedings. These objectives, as outlined in Article 6 of the Criminal Procedure Code of the Russian Federation, include the protection of individual rights, freedoms, and legitimate interests and the fair and prompt resolution of criminal cases to establish accountability or exoneration. The head of the investigative body serves as a key figure in maintaining the integrity and effectiveness of investigations by exercising procedural control, overseeing compliance with legal norms, and ensuring that investigative actions are thorough and impartial. By fulfilling these responsibilities, the head of the investigative body plays a crucial role in upholding the principles of justice, legal certainty, and the rule of law, reinforcing public trust in the criminal justice system. Furthermore, their ability to coordinate and manage investigative processes effectively contributes significantly to achieving the broader purpose of criminal proceedings as defined by the legal framework of the Russian Federation.

## B. METHODS

The authors used the general scientific, systematic method of knowledge to write this scientific article, which allowed them to comprehensively consider and thoroughly analyse the controversial issues of the conceptual apparatus of procedural control of the head of the investigative body and its importance in pre-trial criminal proceedings. The systematic approach allowed us to consider organisational, procedural and managerial aspects of several of the essential powers of the head of an investigative body and their importance in pre-trial criminal proceedings.

The application of analytical and synthesis methods allowed us to identify existing problems in implementing procedural control by the head of the investigative body in pre-trial criminal proceedings. The statistical method included collecting and analysing information on implementing procedural control in pre-trial proceedings in criminal cases by the head of the investigative body and its importance for improving the quality of the preliminary investigation.

As a result of this methodology, the authors obtained new knowledge on the relevant aspects of the concept of procedural control of the head of the investigative body and its importance in pre-trial criminal proceedings.

## C. RESULTS AND DISCUSSION

Despite the importance of the investigative manager for the pre-trial investigation, there has been an ongoing academic debate on the role of procedural control since the start of the criminal justice system reform in 2007 and up to now.

Some processual scholars who study the issue draw attention to existing foreign experience in the construction of legal systems in general and in the functioning of individual institutions. At first glance, the model existing in Germany may seem interesting, where there are no problems related to the division of powers in the implementation of procedural control, prosecutorial oversight, as well as issues of fixing those or other rights and obligations of the head of the investigative body, not going beyond its functional powers. This is because in Germany, the principle of the monopoly of the prosecutor's office on criminal prosecution applies ([Putzke et al., 2018, p. 425](#)). This is as follows: according to the law, the police are subordinated to the Länder Ministries of the Interior, but in fact, they are subordinated to the Public Prosecutor's Office. The

prosecutor is in charge of the investigation of a criminal case, which can be carried out in its entirety by himself. However, this is usually the case for specific categories of serious crimes. Within the police, there are so-called "assistant prosecutors" and other police officers. Alongside the prosecutor, the police and the so-called "investigating judge" are parties to the preliminary investigation ([Ministerium der Justiz Nordrhein-Westfalen, n.d.](#)). Prosecutors also perform the function of procedural management of investigations in several other states, such as France, Spain and Vietnam. ([Dung et al., 2021](#); [Shcherba & Dodonov, 2011, p. 54](#))

This experience of foreign states certainly appeals to proponents of the prosecutorial model of pre-trial investigation. ([Ivanov et al., 2022a, 2022c](#); [Pushkarev et al., 2019a](#)) There is no consensus in academia on this issue. The researches on procedural control are part of other criminal procedure institutions ([Khimicheva, 2003, pp. 297-298](#); [Pushkarev et al., 2022](#)), and standalone studies of procedural control or supervision in criminal proceedings. ([Ivanov et al., 2022b](#); [Khimicheva, 2004, p. 26](#); [Tabakov, 2009, p. 13](#))

Of course, with each subsequent study, criminal procedure science is enriched with new reflections and proposals, forming a systematic view of a particular research object. For example, it is possible to identify the features of procedural control: proximity to the object of control; continuity of control activities; the possibility of quick response to the existing violations and their elimination; personal responsibility of the head for violations of law; application of disciplinary measures to persons who have committed offences.

Indeed, the above-mentioned features directly reflect the supervisory activities of the head of the investigative body and have a positive connotation. Moreover, the hierarchy of present procedural control features reflects the predetermination of one feature by another. For example, the main factor determining the continuity of the control activity and the possibility of reacting quickly to existing violations and eliminating them is its direct proximity to the object of control. This factor is initial because it would be much more challenging to continuously perform control activities and react promptly in case of any irregularities. Personal liability for violation of law is conditioned by the fact that the supervising person is always responsible for the controlled person, as it primarily reflects the result of his/her direct activity. Disciplinary responsibility is envisaged as a measure of influence on the offender.

The specificity of the activity of the head of an investigative body implies a combination of organisational and procedural powers ([Ivanov et al., 2021b](#)), which is essentially the basis for various kinds of discussions on the nature,

essence, and form of control exercised by him from the procedural and departmental positions. Thus, among procedural law scholars, there is quite a broad discussion about the form of control exercised by the head of an investigative body. There are various opposing views of scientists, some of which suggest the existence of only procedural control, rejecting the departmental nature of its implementation ([Ashitko, 1996, p. 37](#)). For example, I. A. Popov ([1998, p. 40](#)) points out the public, national meaning of procedural control, which, when interpreted as departmental, degrades the role of the head of an investigative unit.

It cannot support such arguments because, in our view, the term "departmental" does not abolish publicity and does not deprive the national meaning of exercised procedural activity. On the contrary, it will embody the multifaceted competence of the head of the investigative body and add species identity. In turn, O.V. Khimicheva, sharing the view on naming the control of the head of an investigative body procedural, justifies her vision by the criminal procedural nature of the activity, implementation of which is entrusted to the head of an investigative body. In this case, the emphasis is placed on enshrining the powers (to confirm the criminal-procedural nature) precisely in the code of criminal procedure. ([Khimicheva, 2004, p. 22](#))

It can be stated that the views considered by us, which justify the interpretation of procedural control of the head of an investigative body, are essentially similar and proceed from the understanding of the nature of the criminal procedural activity of the head of an investigative body, which is confirmed by enshrining the competence in the law of criminal procedure. At the same time, the departmental nature of the activities of the head of an investigative body is denied, believing that such control is purely administrative and is entirely beyond the scope of procedural.

In contrast to this view, a point of view combines these concepts. Thus, S. A. Tabakov argues that the control exercised by an investigative body's head should be departmental procedural. The main argument supporting his position is that the scientist leads by emphasising that executive power bodies, including preliminary investigation bodies, prevail over departmental (administrative) control. ([Tabakov, 2009, p. 43](#))

Indeed, it cannot be denied that executive authorities' powers include executive-directive and control and supervisory activities, which correspond to the tasks of the control of the head of the investigative body. The author correctly points out that preliminary investigation bodies belong to the system of executive authorities, which confirms his conclusion about the need to understand the

control of the head of the investigative body as a departmental procedural. The author considers this aspect rather broadly. From this position, it would be worth focusing on the direction of activity of the head of an investigative body, which corresponds to some of the functions of executive authorities.

There is an opinion on which procedural and departmental control takes place. Thus, A. M. Baranov distinguishes departmental and procedural control based on the subject of control. The author says that if the subject is the activity of authorised persons directly related to the proceedings of a criminal case, in this case, we are talking about procedural control. Under departmental control, the scientist understands "control by a higher entity of the same department or activities of authorised persons related to the performance of other official duties, the performance of which is implied by official position." ([Baranov, 2006, p. 286](#)) Unfortunately, despite the variety of opinions proposed by prominent scientists, science has not yet come to a unified understanding of the essence of control exercised by the head of an investigative body.

In this connection, it is advisable to consider the origin and meaning of these words. So, referring to V. Dahl's explanatory dictionary, we see that for the first time in 1863, the concept "departmental" was fixed, i.e. "belonging to the department". Departmental meant "a branch, a part of state administration, constituting something whole" ([Gufo.me, n.d.-b](#)). The same dictionary interprets "process" as "any prolonged successive case, litigation, judicial course of action". The word "control" means "to verify, check". In E. Efremov's Dictionary of Foreign Words, control means "to check, supervise, control" ([Efremov, 1912, p. 219](#)). Thus, it was evident that one of the attributes of control follows from this: belonging to a specific agency.

When determining the form of control exercised by the head of an investigative body, this attribute cannot be categorically ignored. Since the head of an investigative body is, as a rule, a direct supervisor of a controlled subject-investigator, it is impossible not to consider their belonging to the same department, office, or agency, within which exactly the powers granted by the legislator are implemented. Using the etymology of the mentioned categories, we have once again confirmed this thesis. Moreover, not only does the criminal procedure law give powers to the head of an investigative body, for example, article 39 of the Criminal Procedure Code of the RF, but they are also provided for by departmental normative legal acts. For example, Order No. 58 of the Investigation Department of the Russian Ministry of Internal Affairs dated 08.11.2011, "On the procedural powers of the heads of investigative bodies", Order No. 1 of the Russian Ministry of Internal Affairs dated 09.01.2018 ", On

preliminary investigation bodies in the Russian Interior Ministry system", job description of the head of an investigative body.

In addition, Article 5 of the CCrP of the Russian Federation contains a provision reflecting the notion of the head of an investigative body, according to which he is recognised as the official in charge of the investigative unit as well as his deputy. Thus, the law of criminal procedure directly refers to the attribute of belonging to a particular agency, which goes beyond the generally accepted nature of procedural control.

The nature of procedural control is the legal relationship between the head of the investigative body and the investigator regarding compliance with the rules of criminal law, criminal procedural law, and forensic techniques. In turn, departmental control is based not only on the rules of criminal law and criminal procedure but also on departmental regulations due to their specificity.

As a general rule, the term "procedural" regarding the control of the head of the investigative body is conditioned by the fact that his competence to exercise it is enshrined in the criminal procedure law. This is certainly true as it is evident that the criminal procedure law can contain precise procedural powers. This position is also formally stipulated in the academic literature and is not questioned by practitioners and lawmakers who actively use this formulation. However, it is worth noting that the control of the head of the investigative body is much more complex, and its understanding is not at all on the surface of the law of criminal procedure.

As we noted earlier, the head of the investigative body carries out its direct activities within a separate department, where the controlled subject - the investigator is also in direct subordination. Meanwhile, powers of procedural and organisational nature exercised by the supervising subject do not have precise gradation in the legislation. Thus, procedural powers are often reflected in separate departmental normative legal acts. Gradually, this clear distinction between departmental and procedural control has started to blur, which has led to numerous discussions on the form of control exercised in pre-trial proceedings.

It is necessary to provide within the signs of the control of the head of an investigative body an organisational focus of its activities rather than singling it out as a separate type of control. This derives from the fact that the procedural powers of the head of an investigative body are of such an organisational nature. For example, some procedural powers enshrined in Article 39 of the RF CPC imply an organisational component. Thus, the head of an investigative body has

the right to request materials of a criminal case for their subsequent verification. The mere inspection of the criminal case file would only be a procedural power. In contrast, the seizure of the criminal case file contains a power-directive character, which indicates an organisational component. The power to seize a criminal case file is certainly procedural. Still, the act of seizure has a commanding character, granted in the direction exercised by the head of the investigating authority.

In addition, it is helpful to note that the control of the head of the investigative body is also aimed at the observance of rules by employees, which in turn are organisational in nature but are directly linked to the direct procedural activity. For example, instructions coming from the head of the investigative body may not only relate to cases set out in the law of criminal procedure. For example, when reviewing a criminal investigation plan, the head of the investigative body may also draw attention to shortcomings and give instructions to remedy them. Such a power would not be procedural but instead indicate the organisational nature of such an instruction.

The head of the investigative body controls the compliance of the investigator with the duties assigned to him by the job description, holds official meetings, hears versions of the crime, checks investigation plans and plans of investigative actions, controls the performance discipline of the investigators ([Pushkarev et al., 2019b](#)). That is, in general, this kind of authority forms the activity of the head of the investigative body, which is based on the requirements of departmental normative legal acts and strict compliance with the law and is aimed at organising the investigation. In this case, we note that, for example, when checking the plan of the inquiry or the plan of investigative actions, the head of the investigative body, identifying the need to produce other investigative action not reflected in the plan, using his procedural power, instructs the investigator to carry out such an action. Or, by controlling the performance discipline of the investigator, he identifies shortcomings and delays and decides to withdraw the criminal case and transfer it to another investigator.

It is clear that initially, being the head of the investigator and being guided by his job description and other departmental regulations, the head of the investigative body while performing his "non-procedural" duties, can and often uses his procedural powers. In this case, it is impossible to determine the boundaries of such a transition from non-procedural to procedural status since such activities, firstly, are carried out by one subject, secondly, are aimed at organising the investigation and, thirdly, involve a single result enshrined in article 6 of the CCP of the RF.



It concludes that this kind of activity aimed at organising the investigation is of an organisational and procedural nature. It is worth noting that the head of an investigative body also has purely organisational powers to organise investigators' service activities. These may include distributing workload among investigators, setting holiday schedules, holding staff meetings and line-ups, etc.

The organisational nature of the powers of the head of an investigative body also stems from the etymology of the word "leadership". Thus, in the explanatory dictionary of D.N. Ushakov, "manager" is defined as "a person who heads something" ([Gufo.me, n.d.-a](#)). Thus, the nature of the word "leader" already includes the organisational character of the activity. Accordingly, it would be correct to provide among the signs of control exercised by the head of an investigative body an organisational character of activity. Thus, at this stage, we consider it appropriate to make an intermediate conclusion that departmental control is formed by the system of powers of the head of an investigative body, including:

- Procedural powers (envisaged by the Criminal Procedure Code of the Russian Federation);
- Organizational and procedural powers (as prescribed by departmental regulations and aimed at implementation and strict compliance with the norms of the Criminal Procedural Code of the RF);
- Organizational powers (aimed at ensuring the proper order and organisation of official activities within the agency under control).

The head of an investigative body appears not only from the position of a subject of preliminary investigation, endowed with procedural status and relevant powers, but, above all, is a person who heads a separate investigative unit. The activity of each of his subordinates together creates a "portrait" of a particular head of an investigative body, determines the organisation of his activity on the investigation of criminal cases, the cohesion of the team, focus of each of them on production, as evidenced by statistics of solved crimes and criminal cases sent to court by a particular employee of a specific investigative unit. ([Ivanov et al., 2021a](#))

There is no doubt that the head of an investigative body, exercising his supervisory functions, acts as a guarantor of legality, as he checks any investigator's action in the investigation of crimes for validity and compliance with laws and regulations.

This follows from the rules of criminal procedure law concerning the need for the consent of the head of the investigative body, approval of procedural

documents (cancels illegal or unreasonable decisions of the investigator, gives the investigator consent to initiate an application to the court for the election, extension, cancellation, change of preventive measure, other procedural actions that are allowed based on a court decision, approves the indictment). Accordingly, such procedure confirms the fact that the head of the investigative body has read the materials of the criminal case and then signs the necessary procedural document, thereby proving that all conditions of the preliminary investigation have been met, the principles of criminal proceedings have not been violated, and the conclusion of the investigator has completeness, objectivity, admissibility, sufficiency and fully complies with the law of criminal procedure. Moreover, the success of the investigator's activity is influenced by the whole set of measures taken by the head of an investigative body, both procedural and organisational, as they are closely interrelated and have a common goal. Thus, the importance of controlling the head of an investigative body lies in the fact that, by exercising the full range of powers, the head of the investigative body is the guarantor of legality.

Considering the issue of the correlation of procedural and departmental control of the head of an investigative body, it is necessary to analyse the mechanism of activity of the head of an investigative body. This will allow us to determine the standard and specific features of the exercised control. Firstly, the subject of control activity is unified - it is the head of an investigative body. Second, the means of control are the powers of the head of an investigative body. So, in the case of procedural control, it should talk only about procedural powers. In the case of departmental control, procedural powers are supplemented by organizational-procedural and organisational powers. Third, the result of the procedural activity of the head of an investigative body appears in implementing the purpose of criminal proceedings and identifying violations of criminal procedural and other legislation. In contrast, the result of departmental control, along with the above, will be the identification of breaches of legislation relating to the organisation and performance of official activities, bringing of a guilty person to responsibility, removal of an investigator from further investigation of a criminal case, transfer of a case from a criminal case to an investigator.

Accordingly, the mechanism of departmental control of the head of the investigative body is somewhat broader than procedural control. With a single subject, the means and results of the exercised control are different. However, since departmental control is also based on criminal procedural norms, it accordingly includes means and results of procedural activity, expanding it at the expense of other elements (organisational and procedural and organisational).

Based on our study, we propose to distinguish the following features of departmental control of the head of the investigative body: belonging of the head of the investigative body to a particular department; departmental control forms a system of powers of the head of the investigative body (procedural powers; organizational-procedural powers; organisational powers); the meaning of control of the head of investigative body lies in the fact that by exercising the full range of powers, head of the investigative organisation. It is believed that the science of criminal procedure needs theoretical consolidation of the correlation between procedural and departmental control, which, in our opinion, is correlated as general with particular, where procedural control is understood as a special case of departmental control. In this regard, the definitions of departmental and procedural control of the head of the investigative body should be reflected in the criminal procedure science.

#### **D. CONCLUSIONS**

In conclusion, based on the features we have outlined, procedural control should be understood as the activity of the head of an investigative body, carried out under the norms of criminal procedural law during the pre-trial proceedings in criminal cases. This control aims to achieve the primary objectives of criminal proceedings, which include ensuring a fair, comprehensive, and objective investigation, as well as detecting, eliminating, and preventing violations of criminal procedural and other applicable laws by investigators. This activity is conducted within the framework of the procedural independence granted to investigators, ensuring that the balance between oversight and autonomy is maintained. By upholding procedural control, the head of the investigative body plays a critical role in safeguarding the integrity of the investigation process, fostering adherence to legal standards, and promoting the principles of justice and accountability throughout pre-trial proceedings. This approach contributes significantly to the overall efficacy and fairness of the criminal justice system.

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