

# The social role and procedural independence of the investigator in the criminal proceedings of the Russian Federation

## El rol y la independencia del investigador en el procedimiento penal de la Federación de Rusia

DOI: <https://doi.org/10.17981/juridcuc.18.1.2022.10>

Fecha de Recepción: 2021/06/11. Fecha de Aceptación: 2021/12/10

**Gyulnaz Eldarovna Adygezalova**   
Kuban State University. Krasnodar (Russian Federation)  
g.adygezalova@mail.ru

**Andrey Mikhailovich Dolgov**   
Kuban State University. Krasnodar (Russian Federation)  
andrey.m.dolgov@mail.ru

**Husen Manaevich Lukozhev**   
Kuban State University. Krasnodar (Russian Federation)  
husen.lukozhev@mail.ru

**Tatyana Valerievna Faroi**   
Kuban State University. Krasnodar (Russian Federation)  
tatyana.faroi@mail.ru

**Mikhail Aleksandrovich Redkovskiy**   
Ministry of Internal Affairs of Russia for the City of Krasnodar. Krasnodar (Russian Federation)  
mikhail.redkovskiy@mail.ru

How to cite this article:

Adygezalova, G., Dolgov, A., Lukozhev, H., Faroi, T. & Redkovskiy, M. (2022). The social role and procedural independence of the investigator in the criminal proceedings of the Russian Federation. *Jurídicas CUC*, 18(1), 217–240. DOI: <http://dx.doi.org/10.17981/juridcuc.18.1.2022.10>

### Abstract

The subject of the study is the social role and procedural independence of the investigator in the criminal proceedings of the Russian Federation as a key subject conducting criminal proceedings in the pre-trial stages. The authors consider the relationship between the investigator, the prosecutor, the head of the investigative body, the interrogator, and other participants in criminal proceedings, as well as problematic definitions and ensuring the procedural independence of the investigator. The methodology of research have been based on a set of general scientific methods and techniques used by legal science. According to the results of the study, the social role of the investigator in criminal proceedings has been determined, which is considered as one of the fundamental elements of his/her procedural independence. It has been concluded that the social role of the court and the investigator in the criminal process is comparable in terms of their defense of public interests and the importance of their participation in the implementation of criminal law. Therein, the court recognizes an exclusive function – the administration of justice. It has been noted that the absence of norms on the procedural independence of the investigator does not allow determining the place of the investigator in ensuring the balance of interests and mutual responsibility of the individual and the state, since the investigator can only be held liable as a representative of the state if he/she is independent in adopting them at his/her discretion.

**Keywords:** The balance of interests; procedural status; powers; investigative body; legal certainty

### Resumen

El tema central del estudio se encuentra constituido por el rol social y la independencia procesal que cumple el investigador en los procedimientos penales de la Federación de Rusia como un sujeto clave, que dirige los procedimientos penales en las etapas previas al juicio. Los autores examinan la relación entre el investigador, el fiscal, el jefe del organismo de investigación, el interrogador y otros participantes en el procedimiento penal frente a la independencia procesal para el investigador. La metodología de investigación utilizada se basa en la metodología jurídica dialéctica, formal lógica y comparativa. Como resultado del estudio, se pudo determinar el rol social del investigador en el procedimiento penal, el cual se considera como elemento fundamental de la independencia procesal. Se concluye que los roles sociales del tribunal y del investigador en el proceso penal son comparables en cuanto a la defensa de los intereses públicos y a la importancia de su participación en la aplicación de las normas del derecho penal. Al mismo tiempo, al tribunal se le reconoce una función exclusiva: la administración de justicia. Se destaca que el vacío normativo referente a la independencia procesal del investigador no permite determinar su rol social como garante del equilibrio de intereses y de la responsabilidad mutua entre el individuo y el Estado, ya que el investigador sólo puede ser considerado responsable como representante del Estado si es independiente al momento de proceder según su discreción.

**Palabras clave:** Equilibrio de intereses; estado procesal; poderes; organismo de investigación; seguridad jurídica

© The author; licensee Universidad de la Costa - CUC.

JURÍDICAS CUC vol. 18 no. 1, pp. 217–240. January - December, 2022  
Barranquilla. ISSN 1692-3030 Impreso, ISSN 2389-7716 Online



## INTRODUCTION

The investigator occupies a central place in the criminal process since it is his/her activity that consists in direct contact with the rest of the participants in the process, starting from the moment of initiation of a criminal case and until the transfer of the case for consideration to the court. It is on his/her procedural activity that the further course of criminal proceedings depends (Adygezalova, Faroi, Mikhel & Lukozhev, 2020).

The Criminal Procedure Code of the Russian Federation (УПК РФ, 2001) defines an investigator as an official authorized to carry out a preliminary investigation in a criminal case, as well as other powers provided for by the code. Later, the concept of “forensic investigator” was given in Article 5 of the Criminal Procedure Code of the Russian Federation (УПК РФ, 2001). This is an official authorized to carry out a preliminary investigation in a criminal case, as well as to participate, on behalf of the head of the investigative body, in the production of separate investigative and other procedural actions, or to perform separate investigative and other procedural actions without accepting the criminal case for its production.

Among the legal problems that require a more complete scientific development and practical study, a certain interest is aroused by the issues of procedural independence of the investigator in the criminal process. The concept of procedural independence is not fixed in the norms of law, but it is quite reasonably present in the legal doctrine. The question of the procedural independence of the investigator is considered by scholars from different angles: in the context of guarantees of the rights of participants in criminal proceedings (Melnikov, 2008; Gladysheva, Lukozhev & Sementsov, 2013); concerning the prosecutor’s supervision (Khazhnagoev, 2005; Olisov, 2006) and departmental control by the head of the investigative body (Popova, 2010); in the aspect of implementation at certain stages of criminal proceedings (Begiev, 2010a; 2010b) and in different bodies of preliminary investigation (Motyleva, 2004).

The above list of problems of procedural independence of the investigator, which is far from complete, gives grounds to say that the majority of modern scholars recognize both the existence of this phenomenon and the need for its careful legal regulation.

The issue of the procedural independence of the investigator or persons performing similar functions is given considerable attention in the legislation and practice of foreign countries, as well as foreign literature.

Thus, preliminary investigation in France is carried out in two forms: 1) pre-trial – police investigation (inquiry); 2) judicial – preliminary investigation. The [Criminal Code of Procedure of the French Republic \(2020\)](#) refers the judicial investigator who has much greater procedural independence to the bodies of preliminary investigation (Denis, 1974; Soyer, 1992). The [Criminal Code of the Federal Republic of Germany \(2019\)](#) is characterized by the fact that there is no preliminary investigation as such. The preliminary investigation is carried out in the form of an inquiry directly by the prosecutor, who, as a rule, involves the criminal police officers who carry out their assignments (Schroeder, 2014). In [Criminal Procedure Code of the Republic of Poland \(2003\)](#), the prosecutor is in charge of the pre-trial investigation. The purpose of the participation of the prosecutor in criminal pre-trial proceedings is to ensure lawfulness, including, among other things, the validity and timeliness of the initiation of an investigation (Prusak, 1984).

The question of the procedural independence of the investigator is connected with a lot of other legal issues considered from the point of view of the social function of the investigator in criminal proceedings (Kachalova, 2014): the principle of mutual responsibility of the individual and the state; the law-forming interest and the harmonization of the interests of the individual, society and the state; law enforcement in a criminal case, the establishment of the truth in a criminal case, etc.

The purpose of the study was to determine the social role and procedural independence of the investigator in the criminal proceedings of the Russian Federation-RF.

The research was based on such principles as the unity of analysis and synthesis, the unity of logical and historical; the identification of different-quality connections and their interactions in the object; the synthesis of structural and functional ideas about the object, which caused the need to use a variety of general scientific and private research methods (dialectical, formal-logical and comparative-legal). Using the method of dialectical cognition in the study, it was possible to determine the essential features of the procedural status of the investigator, as well as the main elements of his/her procedural independence. Using the comparative legal method, it was necessary to identify the differences in the procedural status of the investigator in the Russian Federation and several foreign countries. The formal-logical method will provide an analysis of the legislation that defines the theoretical and legal basis for the participation of the investigator in criminal proceedings. The comparative analysis makes it possible to determine the procedural position of the investigator in comparison with the procedural position of the judge, the prosecutor, the head of the investigative body, the interrogator, and other participants in criminal proceedings.

## DISCUSSION

The social role of the investigator in criminal proceedings should be considered as one of the fundamental elements of his/her procedural independence, since the subject who is called to defend the interests of the individual, society, and the state in the course of criminal proceedings, seeking to achieve the purpose of criminal proceedings, formulated in the Criminal Procedure Code of the Russian Federation ([УПК РФ, 2001, Art. 6](#)), can make significant procedural decisions and perform procedural actions at his/her internal discretion.

The author's version of the theory of interests proposed by [Pound \(1945a\)](#), in which he accumulated several ideas of European legal thought, may well be applicable within the framework of Russian

legal science and practice. The essence of social interest is precise to ensure a balance between public and individual interests (probably, therefore, sometimes a law-forming interest is understood primarily as one that optimally meets social needs). Thus, as a civil servant, the investigator, using permissible legal means and exercising the powers granted, should be able to identify the interest that needs to be protected by the state. In this regard, it is important that the rules of law that establish the legal status of the investigator, establishing his/her powers, allow him/her in the process of conducting a preliminary investigation not only to identify but also to ensure the law-forming interest that was laid down in the norms of law by the legislator.

Concerning the procedural status of the investigator and his/her procedural independence, we can conclude the following:

1. The criminal procedure legislation fixes the procedural status of the investigator in the Code of Criminal Procedure of the Russian Federation ([УПК РФ, 2001](#), Art. 38), but does not directly fix his/her procedural independence as the most important element of the procedural status of the investigator, which can be called a defect of the law.
2. The law provides for the use of discretion in making procedural decisions, conducting investigative and other procedural actions, but often the discretion of the investigator is limited to the discretion of other participants in criminal proceedings (judge, prosecutor, head of the investigative body), which is caused by the legal uncertainty of the procedural independence of the investigator.

The relationship of a person and a citizen with the state is affected by a wide range of legal acts, ranging from constitutional and legal norms to the norms adopted at the level of municipalities and contained in local acts. The investigator is one of the central figures representing the state in the protection of the rights and legitimate interests of a person and a citizen and acting at the same time in the public interest in the protection of an indefinite circle

of persons and society as a whole. Determining the legal status of the investigator, it is impossible not to turn to the problem of the correlation of social, public, and individual interests, to the mutual responsibility of the individual and the state, which, in turn, will allow taking a fresh look at the problem of the procedural independence of the investigator and all the issues related to it, touched upon in numerous works of scholars.

The question of the mutual responsibility of the individual and the state, which is one of the features of the rule of law, the ideal to which we strive, is a very complex issue, which scholars and practicing lawyers should approach with special care. This is the problem, one or another view of which has a direct impact on legal practice, on legal reality. It is impossible to talk about this, breaking away from the existing social reality ([Adygezalova, 2008](#)).

The implementation of the principle of mutual responsibility of the individual and the state invariably leads to the topic of ensuring and protecting the interests of the individual and the state, which is determined by both law-making and law enforcement activities. The central concept in law-making in this sense is the law-forming interest. The effectiveness of solving this problem depends on how well social, public, and personal interests are taken into account and coordinated. Slightly abstracting from the main topic of the study, we present the position of [Lapaeva \(2000\)](#), who notes that the subject of the sociology of law as a legal discipline is the law as a form of expression, protection, and implementation of law-forming interests, defines them as social interests consistent with the principle of social equality. The activity of an investigator can be effective only if the norms implemented by him/her during the preliminary investigation are formulated clearly, legibly, and intelligibly to fix the range of rights and freedoms recognized by the state, as well as the permissible limits of their restriction.

The question of the social conditionality of law, of the conformity of legal norms with social needs (interests, values), occupies a central place in the sociological theory of law, which proceeds from the fact that law appears as a result of the daily interaction of individuals

and groups of people. The rule of law should meet social needs and be as socially determined as possible, but the law-forming interest should not be reduced only to the social interest (after all, there are still state, individual interests).

Discoursing upon the problems of interaction between the individual and the state, some authors distinguish the so-called pragmatic (rational-legal) model of the relationship between the interests of the state and the individual, which “implies the rejection of the monistic approach to the problem of the priority of social interests (of the individual or the state). Within the framework of this model, the principle of mutual respect for the interests of the individual and the state comes first, which should contribute to the formation of a balanced system of mutual rights and obligations of the state and the individual. Therein, on the one hand, individuals undertake to comply with the requirements of the state’s power regulations, and on the other —the state assumes responsibility for ensuring a decent way of life for all members of the community, and also guarantees certain freedom of behavior of subjects, provided that the freedom of some does not violate the rights and legitimate interests of others (modern states of Western democracy) (Romashov & Nizhnik, 2005). It is further noted that “the principle of mutual respect for the interests of the individual and the state is determined by the laws of interaction between the individual and society” (Adygezalova, 2012, p. 68).

The jurisprudence of interests developed by the American jurist Pound (1942) is, in fact, an example of such a pragmatic model. Therewith, the author understood the law-forming interest as claims and requirements that are subject to recognition, consideration, and protection by legislators and courts; those real interests that will be assessed as reasonable (Pound, 1945b). The investigator, being a significant procedural figure who carries out a preliminary investigation, applying the norms of law, makes significant procedural decisions that cannot but affect the numerous interests of the participants in the legal relationship. The powers granted to the investigator, which determine his/her procedural position, should

give the investigator some discretion and ensure the possibility of investigating the case without fear of interference in the course of the process, he/she should not just mechanically apply the norms of law, but also, guided by the norms of law and his/her professional legal consciousness (УПК РФ, 2001, Art. 17, mentions conscience), ensure a balance of interests, without violating the rights and freedoms of a person and a citizen.

To solve the problem of the balance of interests with the participation of the investigator, let us turn to the social and legal theory of the famous jurist R. Pound, who divided the interests subject to state support and protection into three main groups: a) public interests; b) individual interests; c) public (social) interests.

Public interests are the interests of the state, including as a guarantor of public interests. Individual interests consist of the interests of the individual; the interests of family relations; the interests of material relations. Public interests include “the interests of security, the security of social institutions, general morality, the protection of public resources from waste, general progress, and the protection of human life” (Pound, 1945b, p. 6). A similar position is taken by the well-known jurist Nersesyants (1999).

One of the most effective means of protecting the social interest, according to Pound (1945a), is criminal law, which consists of peremptory norms. The proponent of legal positivism, Austin (1995) wrote that the imposition of absolute duties is the main means to ensure these interests (Lloyd & Freeman, 1979). Violation of the norms of criminal law leads, in turn, to criminal prosecution. Thus, along with criminal law, the norms of criminal procedure law are the foundation for maintaining the rule of law, which is characterized by a relative harmonization of interests. Taking into account the fact that the criminal prosecution in its initial phase is carried out by the investigator (interrogator) and it can be concluded that the investigator defends the social interest.

The investigator, as one of the participants in the criminal process, shall guard all three groups of interests, ensuring their balance by strictly following the requirements of legal norms,



focusing on the principles of law approved in the Russian legal system, in general, and in the criminal procedure legislation, in particular. After the transition of the criminal case from pre-trial to judicial proceedings, the court will make a final decision on the case based on the results of the preliminary investigation. Thus, the activities of the investigator and judge are not only aimed at “protecting the rights and legitimate interests of persons and organizations that have suffered from crimes”, as the legislator puts it in the Criminal Procedure Code of the Russian Federation ([УПК РФ, 2001](#), Art. 6) but also at protecting in a broad sense the interests of a person and a citizen, as well as society and the state, which are the result of the interaction of individuals. From this point of view, the investigator, although not a subject that resolves a criminal case on its merits, and thereby triggers the mechanism for implementing the norms of criminal law, but creates prerequisites for the implementation of the function of justice in criminal proceedings. In other words, the investigator, no less than the judge, ensures the stability of society, the maintenance of law and order, and also forms public opinion, the level of public legal consciousness, preventing its distortion, the loss of trust of members of society to the authorities, the growth of doubts about the inevitability of legal responsibility. Consequently, the social role of the court and the investigator in criminal proceedings is comparable in terms of their defense of public interests and the importance of their participation in the implementation of criminal law. Therein, the court recognizes an exclusive function —the administration of justice.

The social role of the court, as a subject performing the function of justice, is certainly reflected in the norms that consolidate its independence. The history of mankind demonstrates that without an independent judiciary, permissiveness flourishes in society, and human rights and freedoms are violated in every possible way. In this regard, great attention in Russia, as in other countries, is paid to the institution of judicial independence ([Gutnik, 2017](#)).

Following Part 1 of Article 120 of the Constitution of the Russian Federation, “Judges shall be independent and submit only to the Constitution and the federal law” (RF, 2020). This constitutional provision was embodied and specified in the Criminal Procedure Code of the Russian Federation (YIK PΦ, 2001), according to Part 1 of which “In the administration of justice in criminal cases, judges are independent and subject only to the Constitution of the Russian Federation and federal law” (Art. 8.1). These fundamental provisions are detailed in many criminal procedure norms, the meaning of which is that, firstly, the court is subject only to the law, that is, in its procedural activities, the court makes decisions and performs actions applying the norms of substantive law, in a strict established procedural form, and secondly, the legislation, both material and procedural, provides the court with the possibility of applying discretion.

Concerning the investigator, the Constitution of the Russian Federation (RF, 2020), being the basic law containing general legal prescriptions, does not fix such norms. The Criminal Procedure Code of the Russian Federation (YIK PΦ, 2001) does not contain provisions on the independence of the investigator, although, as mentioned above, the overwhelming majority of procedural scholars recognize the procedural independence of the investigator as a component of his/her procedural status, and the social role of the investigator in criminal proceedings is close in its characteristics to the social role of the court (judge). Moreover, in recent years, the opinion has been increasingly expressed about the need to consolidate not only the procedural independence of the investigator but also the interrogator, as a person conducting criminal proceedings (Gredyagin, 2010; Lukozhev & Dolgov, 2018).

In this regard, there is a *problem of legal certainty* of the status of the investigator, his/her procedural independent position, and the implementation of the investigator’s social role.

Legal certainty is considered both in the works of legal theorists and in the works of legal process scholars.

Thus, [Pound \(1945a\)](#) believed that the more the scope of the legal mechanism expands, the higher its “industrial efficiency” (p. 97). This does not mean that the law should interfere in all human relations and situations without exception, but if there is a chance to meet any social needs through it, it should be used. The scholars cited the reflections of supporters of several modern theories: “Thus, according to the Neo-Hegelians, it is necessary to consider all the requirements in the conditions of civilization associated with the growth of human domination, both over internal and external nature” ([Pound, 1945a](#)). According to the representatives of Neo-Kantianism, only those requirements that appear in the conditions of a community of people with free will, that is, a social ideal should be taken into account. Léon Duguit called for paying attention to those requirements that are determined by social interdependence and the performance of social functions ([Pound, 1945a](#)). [Pound \(1945a\)](#) did not agree that interests can be distinguished in this way.

Law is a social institution designed to provide for social needs with the least loss, to maintain the harmony of public, social, and individual interests in society through “social engineering”. An investigator, on the other hand, as a law enforcement officer, when resolving legal conflicts of a criminal procedural nature, may act only within the limits of the powers granted to him/her by law and use only procedural means (including, for example, appealing against the prosecutor’s decision to cancel the decision to initiate a criminal case, to return the criminal case to the investigator for additional investigation, to change the scope of the charge or the qualification of the actions of the accused, or to resubmit the indictment and eliminate the identified shortcomings) established by law. At the same time, the decision to use a particular tool is made not only based on formal issues but also based on their professional legal awareness within the framework defined by law.

The author's version of the theory of interests proposed by [Pound \(1945a\)](#), in which he accumulated several ideas of European legal thought, may well be applicable within the framework of Russian legal science and practice. It is based on the idea of interest expressed in law, developed by the German lawyer [Ier-ling \(1881\)](#), who argued that "law achieves its goal only because it brings the interest of a person on its side" (p. 35). Also, Pound perceived one of the basic principles of utilitarianism, formulated by Bentham, according to which "the greatest happiness of the greatest number of people" should be achieved in society ([Zhidkov, 1999](#), p. 388). The essence of social interest is precise to ensure a balance between public and individual interests (probably, therefore, sometimes a law-forming interest is understood primarily as one that optimally meets social needs). Thus, as a civil servant, the investigator, using permissible legal means and exercising the powers granted, should be able to identify the interest that needs to be protected by the state. In this regard, it is important that the rules of law that establish the legal status of the investigator, establishing his/her powers, allow him/her in the process of conducting a preliminary investigation not only to identify but also to ensure the law-forming interest that was laid down in the norms of law by the legislator.

Referring directly to the works of process scholars ([Zhidkov, 1999](#)), who have studied legal certainty in criminal proceedings, it should be noted that:

Normative purpose is to form and ensure the optimal legal state (regime) of stability and security of the functioning of the individual, society, and the state, manifested primarily through the need for stability of industry regulatory regulation, stability of the initially defined status of subjects of criminal procedural relations; non-collisional statics and dynamics of Russian criminal procedural law; clarity and predictability of the consequences of its application ([Sidorenko, 2017](#)).

According to [Sidorenko \(2018\)](#):

The uncertainty of the law is not the identity and condition of the uncertainty of law; the rule of law is not the identity of the certainty of law. The initial ambiguity, incompleteness (other defects) of the existing legal regulations is not always a factor of uncertainty in Russian criminal procedure law, since individual defects of the law are naturally leveled by the legal awareness and experience of public participants in criminal proceedings (p. 17).

Agreeing with the stated position, it should be noted that the legislator in the formulation of the rules of law in many cases not only allows “defects” but also quite consciously and intentionally leaves the field for discretion, regulating several possible options for making a decision or taking an action, based on the current specific situation. As the supporters of the radical wing of legal realism noted, the certainty of law cannot be absolute, this would deprive the law of the properties of flexibility and dynamism, but, despite the debatable nature of the question of the degree of certainty of law, it must be clear, evident, and create a foundation for legal regulation ([Adygezalova, 2017](#)).

Thus, it can be noted that legal certainty (uncertainty) is characterized by 1) direct and clear regulatory consolidation; 2) individual defects of the law; 3) the possibility of using discretion provided by the legislator.

Transferring the above in relation to the procedural status of the investigator and his/her procedural independence, we can conclude the following:

1. The criminal procedure legislation fixes the procedural status of the investigator in the Code of Criminal Procedure of the Russian Federation ([УПК РФ, 2001](#), Art. 38), but does not directly fix his/her procedural independence as the most important element of the procedural status of the investigator, which can be called a defect of the law.
2. The law provides for the use of discretion in making procedural decisions, conducting investigative and other procedural actions, but often the discretion of the investigator is limited to the discretion of other participants in criminal proceedings (judge, prosecutor, head of the investigative body), which, in fact, is caused by the legal uncertainty of the procedural independence of the investigator.

Melnikov (2008) rightly notes:

Due to the insufficient legislative regulation of the problem of the procedural independence of the investigator, the inquirer and the resulting de facto departmental subordination to their direct and immediate superiors, in practice, negative consequences often arise in the form of violations of human and civil rights and freedoms during the preliminary investigation and inquiry (p. 3).

Therewith, the absence of rules on the procedural independence of the investigator does not fully define its social role, in contrast to the court, whose independence is directly enshrined as a principle of criminal proceedings. In the end, the absence of rules on the procedural independence of the investigator does not allow determining the place of the investigator in ensuring a balance of interests and mutual responsibility of the individual and the state, since the investigator can bear responsibility as a representative of the state only if he/she is independent in making them at his/her discretion.

Hence, there is another problem in determining the social role of the investigator and his/her procedural independence, as the *responsibility of the investigator*.

The mutual responsibility of the individual and the state is an important area of ensuring a balance of interests. Here, law enforcement comes to the fore. If in the field of substantive law, criminal law is of particular importance for ensuring the rule of law, then among the procedural branches of law, criminal procedure law is important, which ensures the proper implementation of criminal law norms and their implementation.

The principle of mutual responsibility of the state and the individual is one of the fundamental principles for the formation of the rule of law and civil society. The main function here lies in the system of guarantees for the protection of human and civil rights and freedoms. It is also important to exclude arbitrariness on the part of the state authorities. This is ensured, among other things, by the criminal liability of state officials for abuse of their official

position and violation of the rights and freedoms of a person. At the same time, individuals and legal entities are responsible for the performance of their duties. Even though the criminal procedure law refers to the investigator as a party to the prosecution, he/she practically performs the role of a conciliator, since the reconciliation procedure allowed in criminal proceedings is not spelled out in the criminal procedure norms of law.

The investigator, as a person conducting a preliminary investigation, which is one of the stages of the criminal process, is called upon to protect the rights and legitimate interests of individuals and organizations, as well as to protect the individual from illegal and unfounded accusations, convictions, restrictions on his/her rights and freedoms. The activities of the investigator, his/her relative procedural independence (but not full autonomy or independence) are important for the reliable establishment of the circumstances in the case, allowing for a further judicial decision.

Meanwhile, several authors recognize the partial legal certainty of the procedural independence of the investigator (Khoryakov, 2006, p. 21; Ogorodov, 2017, p. 41), called by Sidorenko a “defect in the law”, through securing the provisions that the investigator is empowered in the Code of Criminal Procedure of the Russian Federation (УПК РФ, 2001):

To independently direct the course of the investigation, to make a decision on the production of investigative and other procedural actions, except for cases when, following this Code, it is required to obtain a court decision or the consent of the head of the investigative body (Art. 38, part 2, par. 3).

Therewith, Ogorodov (2017) considers the above formulation unsuccessful.

Indeed a passing reference to the independent direction of the investigation and decision-making in the list of powers of the investigator cannot be recognized as a normative consolidation of the procedural independence of the investigator.

Firstly, the procedural independence of the investigator is a “basic” position in relation to the powers that can be represented as a “superstructure”. It is the independence of the investigator, being an important characteristic of his/her procedural status and role in criminal procedural relations, that should, in turn, be the starting point for determining the powers of the investigator. Following the path from the general to the particular, our position can be presented in the form of a logical formula: the procedural status and role of the investigator, the procedural independence of the investigator, the procedural powers of the investigator.

Secondly, the definition of independence only in the aspect of authority does not cover the wide range of conditions, criteria, and elements of procedural independence. Independent direction of the investigation and decision-making is only one of the elements of procedural independence.

Thirdly, such a formulation is also incorrect from the point of view of the consolidation of powers, since any procedural decision, which can include the decision on the course of the investigation, is the conclusion of the subject taking it, expressed in a procedural act that has a procedural form. How a person comes to a particular conclusion, the course of his/her thoughts, cannot be fixed in the rule of law. Thus, independent decision-making does not differ from making a decision without the additional clause “independent”.

Fourthly, the wording of the legislator does not give a clear understanding of whether to independently direct the course of the investigation and independently make a decision on the production of investigative and other procedural actions, or it is only about the independent direction of the course of the investigation since the word “independently” is not attached to the wording “to make a decision...”.

Fifthly, in the Criminal Procedure Code of the Russian Federation ([УПК РФ, 2001](#), Art. 38, Part. 2, par. 3), there are also restrictions on the independent direction of the investigation and decision-making by the investigator, as an exception in cases requiring a court decision or the consent of the head of the investigative body.



In just one paragraph of the part of the article that lists the powers of the investigator, it is certainly impossible to reflect the conceptual foundations of judicial and departmental control, the presence of which has a significant impact on the procedural independence of the investigator. Also, there is no prosecutor's supervision in this wording. Meanwhile, as [Sementsov \(2017\)](#) rightly notes: “by supervising the production of investigative actions, the prosecutor thereby has the opportunity to influence the quality of the preliminary investigation, making the necessary adjustments to the activities of the investigator and the interrogator” (p. 240). Other scholars also write that the independence of investigators should be accompanied by high-quality, effective prosecutor's supervision at the same time ([Ivanov, 2010](#)).

Thus, in our opinion, the consolidation in the Criminal Procedure Code of the Russian Federation ([УПК РФ, 2001](#), Art. 38, Part. 2, par. 3) of the provision on the independent direction of the investigation and decision-making by the investigator does not give grounds to speak even about an unsuccessful normative definition of the procedural independence of the investigator.

The solution to this problem is seen in the presentation of procedural independence in the form of a separate rule, which is general in relation to the special rule on the powers of the investigator.

Therewith, it should be borne in mind that when formulating such a provision, it is impossible to apply an analogy with the previously existing criminal procedure legislation, since never before has the provision on the procedural independence of the investigator had a normative consolidation.

## CONCLUSIONS

The purpose of the study was achieved. Thus, we can formulate the following conclusions.

1. The social role of the investigator in criminal proceedings should be considered as one of the fundamental elements of his/her procedural independence, since the subject who is called to defend the interests of the individual, society, and the state in the course of criminal proceedings, seeking to achieve the purpose of criminal proceedings, formulated in the Code of Criminal Procedure of the Russian Federation ([УПК РФ, 2001](#), Art. 6), can make significant procedural decisions and perform procedural actions at his/her internal discretion.
2. The activities of the investigator and judge are not only aimed at “protecting the rights and legitimate interests of persons and organizations that have suffered from crimes”, as the legislator puts it in the Criminal Procedure Code of the Russian Federation ([УПК РФ, 2001](#), Art. 6), but also at protecting in a broad sense the interests of a person and a citizen, as well as society and the state, which are the result of the interaction of individuals. From this point of view, the investigator, although not a subject that resolves a criminal case on its merits, and thereby triggers the mechanism for implementing the norms of criminal law, but creates prerequisites for the implementation of the function of justice in criminal proceedings. The investigator, no less than the judge, ensures the stability of society, the maintenance of law and order, and also forms public opinion, the level of public legal consciousness, preventing its distortion, the loss of trust of members of society to the authorities, the growth of doubts about the inevitability of legal responsibility. Consequently, the social role of the court and the investigator in criminal proceedings is comparable in terms of their defense of public interests and the importance of their participation in the implementation of criminal law. Therein, the court recognizes an exclusive function —the administration of justice.
3. The Criminal Procedure Code of the Russian Federation ([УПК РФ, 2001](#)) does not contain provisions on the independence of the investigator, although, the overwhelming majority of procedural scholars recognize the procedural independence of the investigator as a component of his/her procedural status, and the social role of the investigator in criminal proceedings is close in its characteristics to the social role of the court (judge).

4. The absence of rules on the procedural independence of the investigator does not fully define its social role, in contrast to the court, whose independence is directly enshrined as a principle of criminal proceedings. In the end, the absence of rules on the procedural independence of the investigator does not allow determining the place of the investigator in ensuring a balance of interests and mutual responsibility of the individual and the state, since the investigator can bear responsibility as a representative of the state only if he/she is independent in making them at his/her discretion.

#### REFERENCES

- Adygezalova, G. E. (2017). Sociological jurisprudence of the United States in the 20th century: the formation of doctrine, the development and improvement of the rule of law. [*Doctoral thesis*]. Kuban State University, Krasnodar, Russia.
- Adygezalova, G. E. (2012). *Sociological jurisprudence of the United States in the twentieth century: the formation of doctrine, the development and improvement of the rule of law*. St. Petersburg: Legal-Press Centre.
- Adygezalova, G. E. (2008). Harmonization of the interests of the state, society and the individual (from the standpoint of American sociological jurisprudence and the realistic school of law). In, RGNF, *State responsibility to the individual: the experience of history and the present: materials of the international conference*, (pp. 132–142). Krasnodar: Kuban State University.
- Adygezalova, G. E., Faroi, T. V., Mikhel, D. E. & Lukozhev, H. M. (2020). Judicial debate in criminal proceedings as a way of expressing the interests of the parties to the conflict. *Revista Inclusiones*, 7(SI), 319–327. Available: <https://revistainclusiones.org/index.php/inclu/article/view/322>
- Austin, J. (1995). *The province of jurisprudence determined*. Cambridge: Cambridge University Press.

- Begiev, Kh. B. (2010a). Problems of ensuring the procedural independence of the investigator at the stage of the completion of the preliminary investigation. *Society and law*, 5(32), 194–200. Available from [https://mvd.ru/upload/site119/folder\\_page/003/467/465/sl-2010-5.pdf](https://mvd.ru/upload/site119/folder_page/003/467/465/sl-2010-5.pdf)
- Begiev, Kh. B. (2010b). Implementation of the procedural independence of the investigator at the stage of initiating a criminal case in modern criminal proceedings in Russia. *Society and law*, 2(29), 206–212. Available from [https://mvd.ru/upload/site119/folder\\_page/003/467/465/sl-2010-2.pdf](https://mvd.ru/upload/site119/folder_page/003/467/465/sl-2010-2.pdf)
- Denis, D. (1974). *L'enquete preliminaire. Etude theorique et pratique*. Paris: Police-revue.
- Federal Republic of Germany. (2019). Criminal Code of the Federal Republic of Germany. [Online]. Available: <https://www.legislationline.org/documents/section/criminal-codes/country/28/Germany/show>
- French Republic. (2020). Criminal Code of Procedure of the French Republic. [Online]. Available: <https://www.legislationline.org/documents/section/criminal-codes/country/30/France/show>
- Gladysheva, O. V., Lukozhev, Kh. M. & Sementsov, V. A. (2013). *Guarantees of the rights of participants in criminal proceedings: problems and possible solutions*. Moscow: Yurlitinform.
- Gredyagin, I. V. (2010). The concept and content of the procedural independence of the interrogator. *Society and Law*, 4(31), 252–255. Available: <https://cyberleninka.ru/article/n/ponyatie-i-soderzhanie-protsessualnoy-samostoyatelnosti-doznavatelya>
- Gutnik, O. V. (2017). Institute for the independence of the court in criminal proceedings of the Russian Federation. *Russian Law*, (4), 67–73. <https://doi.org/10.17803/1729-5920.2017.125.4.067-073>

- Iering, R. (1881). *Purpose in law*. St. Petersburg: Publishing house of N.V. Muravyov.
- Ivanov, A. L. (2010). Procurator's protection of citizens' constitutional rights. *Legality*, 9(911), 55–57.
- Kachalova, O. V. (2014). Procedural independence of the investigator through the prism of his social function. *Crime Investigation: problems and ways of their solutions*, 4, 349–354.
- Khazhnagoev, A. Z. (2005). Procedural independence of the investigator and prosecutor's supervision. *Russian Agricultural Journal*, 6, 12–14.
- Khoryakov, S. N. (2006). Procedural independence of the investigator. [Doctor thesis]. Moscow University of the Ministry of Internal Affairs of the Russian Federation, Moscow, Russia.
- Lapaeva, V. V. (2000). *Sociology of law*. Moscow: Norma-Infra-M.
- Lloyd, D. & Freeman, M. (1979). *Introduction to jurisprudence*. London: Stevens & Sons.
- Lukozhev, Kh. M. & Dolgov, A. M. (2018). *Inquiry as a form of preliminary investigation*. Moscow: Yurlitinform.
- Melnikov, V. Yu. (2008). Investigator and interrogator in criminal proceedings. *Conflict processing*, 4, 3–6.
- Melnikov, V. Yu. (2008). Procedural independence of the investigator as a guarantee of the protection of the rights and freedoms of the individual. *Business Safety*, 2, 6–12. Available: <https://cyberleninka.ru/article/n/protsessualnaya-samostoyatel'nost-sledovatelya-kak-garantiya-zaschity-konstitutsionnyh-prav-i-svobod-uchastnikov-ugolovnogo>
- Motyleva, E. A. (2004). On the procedural independence of the investigator of the internal affairs bodies. *Law and Justice*, 4, 54–55.
- Nersesyants, V. S. (1999). *Philosophy of law: Textbook for universities*. Moscow: Norma-Infra-M.

- Ogorodov, A. N. (2017). Procedural independence of an investigator in criminal proceedings. [*Doctoral thesis*]. University of Prosecutor's Office of the Russian Federation, Moscow, Russia.
- Olisov, R. Yu. (2006). The ratio of the procedural independence of the investigator and prosecutor's supervision in domestic pre-trial proceedings. [*Doctoral Thesis*]. N. I. Lobachevsky State University of Nizhny Novgorod National Research, Nizhnii Novgorod, Russia.
- Popova, T. Yu. (2010). Influence of remedial and administrative powers of the head of investigatory body on realization of procedural independence of the investigato. *Legal Science and Practice: Bulletin of the Nizhny Novgorod Academy of the Russian Ministry of Internal Affairs*, 1(12), 161–165. Available from <https://media.mvd.ru/files/application/1000854>
- Pound, R. (1945a). *An introduction to the philosophy of law*. New Haven/London: Yale University Press/Humphrey Milford-Oxford University Press.
- Pound, R. (1945b). *Criminal justice in America*. Cambridge: Harvard University Press.
- Pound, R. (1942). *Social control through law*. New Haven/London: Yale University Press/Humphrey Milford-Oxford University Press.
- Prusak, F. (1984). *Prosecutor's supervision over preparatory proceedings*. Warszawa: Legal Editorial.
- RF. State Duma. (2020). Constitution of the Russian Federation. [*Online*]. Available: <http://www.constitution.ru/>
- RF. State Duma. (November 22, 2001). The Criminal Procedure Code of the Russian Federation. [*YIK PΦ*]. Federal Law No. 174-FZ. Available: <https://docs.cntd.ru/document/901802257>

- Republic or Poland. (2003). Criminal Procedure Code of the Republic of Poland. [Online]. Available: <https://www.legislationline.org/documents/section/criminal-codes/country/10/Poland/show>
- Romashov, R. A. & Nizhnik, N. S. (Eds.) (2005). *State, society, personality: compatibility problems*. Moscow: Yuurist.
- Schroeder, F. C. (2014). *Strafprozessrecht*. München: C. H. Beck.
- Sementsov, V. A. (2017). *Investigative actions in pre-trial proceedings (general provisions of theory and practice)*. Moscow: Yurlitinform.
- Sidorenko, M. V. (2018). Legal certainty of Russian criminal procedure law. [Doctoral thesis]. Moscow University of the Ministry of Internal Affairs of the Russian Federation, Moscow, Russia.
- Sidorenko, M. V. (2017). *Legal certainty of the Russian criminal procedural law (state and formulation of the problem)*. Moscow: Yurlitinform.
- Soyer, J.-Cl. (1992). *Droit penal et procedure penale*. Paris: Librairie Générale de Droit et de Jurisprudence.
- Zhidkov, O. A. (Ed.) (1999). Anthology of world legal thought: In 5 volumes. [Vol. 3. Europe. America: 17th–20th centuries]. Moscow: Mysl.

**Gyulnaz Eldarovna Adygezalova.** Doctor of Law, Kuban State University (Krasnodar, RF). ORCID ID: <https://orcid.org/0000-0003-3682-2121>

**Andrey Mikhailovich Dolgov.** Ph.D. in Law, Kuban State University (Krasnodar, RF). ORCID ID: <https://orcid.org/0000-0001-8580-0450>

**Husen Manaevich Lukozhev.** Ph.D. in Law, Kuban State University (Krasnodar, RF). ORCID ID: <https://orcid.org/0000-0001-7984-6356>

**Tatyana Valerievna Faroi.** Ph.D. in Law, Kuban State University (Krasnodar, RF). ORCID ID: <https://orcid.org/0000-0001-8839-5593>

**Mikhail Aleksandrovich Redkovskiy.** Colonel of Justice, Head of the Investigation Department of the Ministry of Internal Affairs of Russia for the city of Krasnodar (Krasnodar, RF). ORCID ID: <https://orcid.org/0000-0002-7189-4924>