



PROSECUTOR'S SUPERVISION OVER THE ACTIVITIES OF THE BODIES OF PRELIMINARY INVESTIGATION ON COMPENSATION FOR DAMAGE CAUSED BY A CRIME AT THE STAGE OF INITIATING A CRIMINAL CASE

Dmitriy A. Ivanov

Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation (MGIMO-University) – Russia
dmitry.aleks.ivanov@gmail.com

Alexey V. Makeev

Federal State Budget-Funded Educational Institution of Higher Education “The Russian State University of Justice” – Russia
dmitry.aleks.ivanov@gmail.com

Sergey A. Polyakov

Novosibirsk State Technical University (NSTU) – Russia
dmitry.aleks.ivanov@gmail.com

Elmir N. Alimamedov

Finance University under the Government of the Russian Federation – Russia
dmitry.aleks.ivanov@gmail.com

ABSTRACT

Aim: The article is devoted to the consideration of the essence and main directions of prosecutorial supervision over the activities of officials of the preliminary investigation bodies for compensation for harm caused by a crime at the stage of initiating a criminal case. According to the deep conviction of the authors, one of the directions for ensuring the rights and legitimate interests of victims of crimes is to ensure compensation for property and physical damage, as well as compensation for moral damage and damage to business reputation. This area of activity of the preliminary investigation bodies is no less important than bringing the perpetrators to justice in order to assign them a fair punishment. **Results:** The author identified some reasons that negatively affect the implementation of prosecutorial supervision over the activities of these participants in criminal proceedings to ensure compensation for harm caused by a crime at the stage of pre-investigation verification. **Conclusion:** In conclusion, the authors substantiate the conclusion that at present, prosecutorial supervision over the activities of officials of the bodies of preliminary investigation is relevant and especially in demand to ensure the principle of competitiveness of the parties, the creation of legal guarantees for the realization by persons who have become victims of criminal acts, the right to full compensation for the harm caused. Prosecutorial supervision is proposed to be regarded as an important dominant of the procedural function of prosecutors, aimed at preventing violations in the activities of the preliminary investigation and inquiry bodies to compensate for harm caused by criminal acts, starting from the stage of initiating a criminal case.

Keywords: Court. Criminal proceedings. Inquiry Officer. Investigator. Investigative Actions. Pre-Investigation Check.



SUPERVISÃO DO PROCURADOR SOBRE AS ATIVIDADES DOS ÓRGÃOS DE INVESTIGAÇÃO PRELIMINAR DE INDENIZAÇÃO POR DANOS CAUSADOS POR CRIME EM ETAPA DE INICIAÇÃO DE PROCESSO CRIMINAL

RESUMO

Objetivo: O artigo dedica-se à consideração da essência e principais orientações da supervisão do Ministério Público sobre as actividades dos funcionários dos órgãos de instrução preliminar para reparação de danos causados por um crime na fase de instauração de um processo-crime. De acordo com a profunda convicção dos autores, uma das direções para a garantia dos direitos e interesses legítimos das vítimas de crimes é garantir a indenização por danos materiais e físicos, bem como a indenização por danos morais e danos à reputação empresarial. Esta área de atuação dos órgãos de investigação preliminar não é menos importante do que levar os autores à justiça para lhes atribuir uma punição justa. **Resultados:** O autor identificou alguns motivos que afetam negativamente a implementação da supervisão do Ministério Público sobre as atividades desses participantes em processos criminais para garantir a reparação de danos causados por um crime na fase de verificação pré-investigação. **Conclusão:** Em conclusão, os autores fundamentam a conclusão de que, na atualidade, a fiscalização do Ministério Público sobre as atividades dos funcionários dos órgãos de instrução preliminar é relevante e principalmente na exigência de assegurar o princípio da competitividade das partes, a criação de garantias jurídicas para a realização por pessoas que tenham se tornado vítimas de atos criminosos, o direito à reparação integral pelos danos causados. Propõe-se que a supervisão do Ministério Público seja considerada um importante dominante da função processual do Ministério Público, destinada a prevenir violações nas atividades dos órgãos de instrução e inquérito para reparação de danos causados por atos criminosos, a partir da fase de instauração de um processo-crime .

Palavras-chave: Acções de investigação. Processo penal. Investigador; Investigador. Tribunal. Verificação pré-inquérito.

1. INTRODUCTION

Modern views on the activities of prosecutors to supervise the implementation of criminal proceedings are being actively formed. In this connection, the focus is on topical issues about the procedural powers of the prosecutor, the relationship between prosecutorial supervision and judicial control, including those carried out by them in the investigation of certain types of crimes (Pushkarev et al., 2021), which shows the high relevance and practical significance of the issue.

The former Code of Criminal Procedure of the RSFSR (Art. 136-138) charged the prosecutor with supervision over the timeliness and correctness of recognizing the relevant persons as victims, civil plaintiffs, civil defendants, as well as over the implementation of the



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requirements of the law to ensure compensation for material damage and the application of confiscation of property (Art. 30, 175).

Nowadays, the activities of the prosecutor in supervising the bodies of preliminary investigation are also regulated by a rather extensive list of normative legal acts. Let us clarify that the legal basis for prosecutorial supervision of this type of activity of the preliminary investigation bodies is the provisions contained in Art. 129 of the Constitution of the Russian Federation (1993), Art. 37 Code of Criminal Procedure of the Russian Federation (State Duma of the Federal Assembly of the Russian Federation, 2001), Art. 4 of the Federal Law of January 17, 1992 No. 2202-I "On the Prosecutor's Office of the Russian Federation" (Supreme Soviet of the Russian Federation, 1992).

2. MATERIALS AND METHODS

The methodological basis of the study is the general scientific systematic method of cognition, which made it possible to comprehensively consider the prosecutor's supervision of the activities of the preliminary investigation bodies to compensate for the harm caused by the crime at the stage of initiating a criminal case, and related problems of theory and practice.

In preparing this study, the authors used private scientific methods:

- the formal-logical method, consisting in the analysis of the elements of prosecutorial supervision over the activities of the bodies of preliminary investigation to compensate for the harm caused by the crime, at the stage of initiating a criminal case;
- the comparative legal method, which analyzes the features of the regulatory legal regulation of prosecutorial supervision over the activities of the preliminary investigation bodies for compensation for harm caused by a crime at the stage of initiating a criminal case;
- the concrete sociological method used in the sociological survey of investigators and heads of investigative bodies;
- the statistical method, including the collection and analysis of information on the number of pre-investigation materials at the stage of initiating a criminal case, studied by prosecutors and returned for additional verification due to violations of the principle of the legality of criminal proceedings;
- the method of legal and technical analysis used in formulating and making proposals for improving the provisions of the criminal procedural legislation regulating the activities of



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the prosecutor in supervising the activities of the preliminary investigation bodies to compensate for the harm caused by the crime at the stage of initiating a criminal case.

3. RESULTS ANALYSIS

A significant group of norms regulating prosecutorial supervision over the area of activity of the preliminary investigation bodies under study is concentrated in by-laws adopted on the basis of Part 1 of Art. 17 and Part 2 of Art. 30 of the Federal Law "On the Prosecutor's Office of the Russian Federation" (Prosecutor General's Office of the Russian Federation, 2007; 2011; 2015).

However, the above list of normative legal acts, of course, is not an exhaustive legal framework governing prosecutorial supervision of activities to ensure compensation for harm caused by a crime.

At the same time, it should be noted that the so-called supervisory proceedings, which consist in the collection and systematization by prosecutors of copies of procedural documents, which record the most important decisions of the person conducting the preliminary investigation (the decision to initiate a criminal case, the protocol for the detention of a suspect, the decision to bring a person as an accused, a petition for a search in a dwelling, a record of a search in a dwelling in urgent cases, an indictment, an indictment, etc.), allow, among other things, to monitor the effectiveness of this type of activity of these participants in pre-trial proceedings.

Describing the forms of prosecutorial supervision depending on its objects, many authors focus on the rights of the victim (Agutin, 2009, p. 64; Soloviev et al., 2000, p. 69).

In this connection, the importance of prosecutorial supervision is additionally substantiated by the fact that the powers of the prosecutor as a body of supervision over the preliminary investigation are of an authoritative and administrative nature (Yakupov & Galuzo, 2008, p. 317).

They allow not only to identify committed violations of the law by officials conducting a preliminary investigation, but also to quickly eliminate them with the least negative effect in relation to the observance of the rights of victims of criminal acts.

Arguing that victims of crimes have equal opportunities with the suspect (accused), K.V. Kamchatov and M.V. Parfenova (2013) believe that



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[...] it is important to organize prosecutorial supervision in order to create the necessary conditions for the victim and his representative to exercise procedural rights... The procedural means of such supervision are the timely recognition of a person as a victim; explanation to the victim of his rights, including the right to compensation for the harm caused by the crime... (p. 68).

Agreeing with this argument and the evidence of the existence of the “prosecutor-victim” theoretical model, we add that its implementation in procedural realities must be carried out through the formation of a structured prosecutorial supervision formed by the legislator, since the prosecutor, as an investigator and interrogating officer, directly comes into contact with the victims of crimes in the production of procedural actions.

In this aspect, attention is drawn to the experience of law enforcement practice in the United States, where in criminal proceedings there is a provision on the right of victims of criminal acts to consult with the prosecutor (Kukhta & Makhov, 2008, p. 83). As part of the exercise of the powers granted by the domestic criminal procedure law, the prosecutor only indirectly examines the content of the materials of pre-investigation checks and criminal cases regarding the observance of the rights of persons affected by criminal acts, including with the aim of creating guarantees for compensation for the harm caused by the crime.

In particular, clause 1.2 of Order No. 189 of the Prosecutor General's Office of the Russian Federation dated November 27, 2007 “On the organization of prosecutorial supervision over the observance of the constitutional rights of citizens in criminal proceedings” instructs prosecutors to: legal and factual status of the victims. In order to protect the rights and legitimate interests of victims of crimes, take measures to ensure civil claims in a criminal case (Pushkarev et al., 2021).

Additionally, let us note the order of the General Prosecutor's Office of the Russian Federation dated December 28, 2016 No. 826 “On the organization of prosecutorial supervision over the procedural activities of the preliminary investigation bodies”, which obliges prosecutors to take a balanced approach to the consideration of complaints and statements of participants in criminal proceedings, to take measures within their existing powers to restore violated rights, compensation for material damage and compensation for moral damage (Prosecutor General's Office of the Russian Federation, 2016).

In continuation of the designated position, we consider it necessary to consider the main directions of prosecutorial supervision over the procedural activities of officials conducting a preliminary investigation, including their provision of conditions and guarantees for compensation for harm caused by criminal acts.



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Starting from the stage of initiating a criminal case, it should be noted the need for careful supervision by the prosecutor over the content of the materials of the pre-investigation check. The criminal procedure law provides the prosecutor with a number of powers for this. In particular, the consideration of complaints about the refusal to accept a report of a crime (Part 5 of Art. 144 of the Criminal Procedure Code of the Russian Federation); obtaining copies of decisions to initiate a criminal case and to refuse to initiate a criminal case (Part 4 of Art. 146, Part 4 of Art. 148 of the Code of Criminal Procedure of the Russian Federation).

According to A.V. Agutin and G.L. Kulikova (2016), which seems to be scientifically substantiated,

the subject of prosecutorial supervision over the implementation of the law when initiating a criminal case can be both legally significant procedural decisions and legally significant actions (inaction) of officials carrying out procedural activities at the stage of initiating a criminal case. (p. 44).

It would be reasonable to note that along with checking the legality of the decisions taken to refuse to initiate a criminal case, prosecutors should check not only the signs of the presence of *corpus delicti*, but it is equally important to pay special attention to the circumstances characterizing the nature and extent of the harm caused by the crime. Even if at this stage the specified information is not established as accurately and reliably as possible, the prosecutor, when checking the materials, should not exclude the existence of facts that the decisions taken are unfounded.

The issue of making decisions to refuse to initiate a criminal case is also relevant because the issuance of decisions to refuse to initiate a criminal case limits the rights of persons who have become victims of criminal encroachments. These decisions, in their essence, level the possibility of receiving compensation for the harm caused by the crime by the victims. The statistical data analyzed by the authors clearly and extremely negatively confirm our arguments.

In particular, as B.Y. Gavrilov (2017),

over the past 25 years, the level of criminal procedural response has decreased by almost 8 times, as evidenced by the reduction in the share of initiated criminal cases (2.8 million in 1992 and 1.85 million in 2016) to the number “rejected” materials, the figure of which in 1992 amounted to 1.3 million against 6.8 million in 2016. (p. 96).

At the same time, according to the data cited by E.V. Bogatova (2016), “in 2015, only the prosecutor’s office... canceled 2,516,547 decisions to refuse to initiate a criminal case” (p. 2).



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Let us note that the author does not give a gradation of the grounds on which the prosecutor canceled the decision to refuse to initiate a criminal case. However, there is a clear certainty that a significant part of them was canceled due to the failure to establish information about the nature and amount of the harm caused by the crime.

The study of "refusal" materials conducted by the authors made it possible to establish that the prosecutors canceled the decisions made to refuse to initiate a criminal case due to the failure to establish the nature and extent of the harm caused by the crime in 38.9% of cases. At the same time, in 46.4% of cases, these decisions were canceled by the prosecutor on other grounds (unfounded decision, technical errors, the applicant's complaint, etc.).

The vast majority of the facts of making unreasonable decisions to refuse to initiate criminal cases are due to the incompleteness of the pre-investigation check, the low quality of the collected materials, including those received from the body of inquiry with the results of the execution of instructions, which indicates an inefficient organization of interaction between the bodies of inquiry and preliminary investigation, including when establishing the nature and extent of the harm caused by the crime. All of the above causes justified complaints from citizens, legal entities and entails the issuance of acts of prosecutorial response.

Thus, the authors come to the conclusion that prosecutorial supervision of the activities of the bodies of preliminary investigation and bodies of inquiry is necessary and in demand, starting from the moment a message about a committed or impending crime is received by law enforcement agencies. Decisions made by officials who check reports of crimes need supervision by the prosecutor, also due to the fact that in the process of carrying out verification activities, so-called conciliation procedures can take place between the applicant and the person who caused the harm and is subject to criminal liability.

However, it is important to note that the prosecutor, as part of the verification of these materials, is obliged to focus not only on the availability of information about the facts of criminal infliction of harm, but also on the possibilities for its compensation (Pushkarev et al., 2019). Most often, the initial information about this is contained in the applicant's explanation and statement about the crime committed. Let us dwell on the statement of a crime (Art. 141 of the Code of Criminal Procedure of the Russian Federation), given that it is the initial document indicating the specific type and amount of harm caused by a criminally punishable act. The prosecutor, analyzing the materials of pre-investigation checks and decisions to refuse to initiate criminal cases, should pay close attention to the content of the



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crime statement, including the availability of information about the nature and amount of the harm caused.

In cases where there are statements from legal entities in the materials of the pre-investigation check, some features should be highlighted that the prosecutor should pay attention to. In particular, authorized officials of a legal entity (legal adviser, accountant, merchandiser, etc.) must prepare, and the head, respectively, sign a written statement containing information about the crime committed, the nature and amount of harm. This application is also signed by the chief accountant, and the stamp of the legal entity is affixed to the document. If there has been a theft of inventory items, then a certificate of the balance sheet value of the property and other valuables that have become the subject of theft is additionally attached to the application.

Other documents confirming the nature and amount of property damage caused may also be attached to the application and the certificate of cost (Ivanov, 2009, p. 87).

As for the direct supervisory activity of the prosecutor for the violations of the criminal procedure law he has identified when checking "refusal" materials to establish the nature and amount of the harm caused by the crime, in this context the prosecutor is, according to the authors, the only subject of criminal procedure legal relations who should coordinate the activities of the preliminary investigation bodies to resolve the problems of victims of criminal attacks, establish all the circumstances of the crime committed and, as a result, contribute to the provision of compensation for harm.

4. CONCLUSIONS

In this regard, in order to ensure the comprehensiveness, completeness and objectivity of verifications of reports of crimes and the timely adoption of decisions in accordance with the law, prosecutors need to organize systematic proactive procedural control over their conduct before the expiration of the period provided for in Art. 144 Code of Criminal Procedure of the Russian Federation.

At present, the role and importance of prosecutorial supervision over the activities of officials of the bodies of preliminary investigation is especially increasing, including the creation and provision of conditions at the stage of initiating a criminal case for full compensation for harm to victims of criminal acts. In this connection, there is a conceptual trend that embodies prosecutorial supervision not as something alien and negative, but as an important response tool aimed at correcting mistakes and omissions during the pre-



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investigation check, given the special significance of the stage of initiating a criminal case in the criminal process as a whole.

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