

# The Investigator's Actions to Compensate for the Harm Caused by the Crime in Determining the Form of Terminating the Preliminary Investigation \*

Dmitriy Ivanov,<sup>1</sup> Vasily Potapov,<sup>2</sup> Vitaliy Vasyukov,<sup>3</sup> Valeriia Artemova,<sup>4</sup> Elmir Alimamedov<sup>5</sup>

<sup>1,3</sup> Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation (MGIMO-University),

<sup>2</sup> Pitirim Sorokin Syktyvkar State University, Russia, <sup>4</sup> Moscow University of the Ministry of Internal Affairs of Russia named by V. Ya. Kikot,

<sup>5</sup> Finance University under the Government of the Russian Federation



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## Abstract

Investigations into the termination of preliminary criminal investigations traditionally encompass two forms: closing a criminal case and concluding the preliminary investigation through an indictment for prosecutor transfer. Prior research has examined these processes, emphasizing the importance of procedural correctness and legal compliance. However, existing studies fall short in elucidating the investigator's actions concerning harm compensation during preliminary investigation termination. The purpose of this study was to explore the investigator's actions to ensure compensation for harm caused by a criminally punishable act during the termination of the preliminary investigation. The authors employed a holistic approach, including the general scientific method, systematic analysis, synthesis, and comparative legal analysis. The results revealed that regardless of the form of termination, measures for compensating victims of criminal acts must be taken. These include appealing against unlawful decisions, and preparing claims for rights protection and compensation in civil proceedings. Compensation for harm remains a priority throughout pre-trial proceedings, even after termination.

**Keywords:** Pre-Trial Criminal Proceedings; Criminal Case; Investigator; Prosecutor; Termination of Criminal Case.

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<sup>1</sup> **Dmitriy Ivanov** is an Associate Professor, Phd of legal sciences at Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation (MGIMO-University). ORCID: <http://orcid.org/0000-0002-2023-3771> Email: [dmitriy.a.ivanov@bk.ru](mailto:dmitriy.a.ivanov@bk.ru)

<sup>2</sup> **Vasily Potapov** is Professor, Doctor of legal sciences at Pitirim Sorokin Syktyvkar State University, Russia. ORCID: <http://orcid.org/0000-0002-3150-088X> Email: [v.d.potapov@mail.ru](mailto:v.d.potapov@mail.ru)

<sup>3</sup> **Vitaliy Vasyukov** is Professor, Doctor of legal sciences at Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation (MGIMO-University). ORCID: <http://orcid.org/0000-0003-0743-5616> Email: [v.f.vasyukov@mail.ru](mailto:v.f.vasyukov@mail.ru)

<sup>4</sup> **Valeriia Artemova** is Senior lecturer, Phd of legal sciences Moscow University of the Ministry of Internal Affairs of Russia named by V. Ya. Kikot. ORCID: <http://orcid.org/0000-0002-4040-7599> Email: [val.val.artemova@yandex.ru](mailto:val.val.artemova@yandex.ru)

<sup>5</sup> **Elmir Alimamedov** is Senior lecturer at Finance University under the Government of the Russian Federation. ORCID: <http://orcid.org/0000-0003-2477-3166> Email: [alimamedov.e.n@mail.ru](mailto:alimamedov.e.n@mail.ru)

\*Corresponding author: [dmitriy.a.ivanov@bk.ru](mailto:dmitriy.a.ivanov@bk.ru)

## Tindakan Penyidik Sebagai Ganti Kerugian Akibat Tindak Pidana Dalam Menentukan Bentuk Penghentian Penyidikan Pendahuluan

### Abstrak

Penyidikan terhadap penghentian penyidikan pidana pendahuluan secara tradisional mencakup dua bentuk: penutupan perkara pidana dan penutupan penyidikan pendahuluan melalui surat dakwaan mutasi jaksa. Penelitian sebelumnya telah mengkaji proses-proses ini, dengan menekankan pentingnya kebenaran prosedur dan kepatuhan hukum. Namun, penelitian yang ada masih kurang dalam menjelaskan tindakan penyidik mengenai kompensasi kerugian selama penghentian penyidikan pendahuluan. Para penulis menggunakan pendekatan holistik, termasuk metode ilmiah umum, analisis sistematis, sintesis, dan analisis hukum komparatif. Hasilnya menunjukkan bahwa apapun bentuk keputusan hubungan kerja, tindakan untuk memberikan kompensasi kepada korban tindak pidana harus diambil. Hal ini termasuk mengajukan banding terhadap keputusan yang melanggar hukum, dan menyiapkan tuntutan untuk perlindungan hak dan kompensasi dalam proses perdata. Kompensasi atas kerugian tetap menjadi prioritas selama proses pra-persidangan, bahkan setelah penghentian.

**Kata Kunci:** Persidangan Pidana Praperadilan; Kasus kriminal; Peneliti; Jaksa; Penghentian Perkara Pidana

### Действия следователя по возмещению вреда, причиненного преступлением, при определении формы прекращения предварительного расследования

#### Абстрактный

Расследование о прекращении предварительного расследования традиционно осуществляется в двух формах: закрытие уголовного дела и завершение предварительного следствия вынесением обвинительного заключения о переводе прокурора. Предыдущие исследования изучали эти процессы, подчеркивая важность процедурной правильности и соблюдения законодательства. Однако существующие исследования не в состоянии разъяснить действия следователя по возмещению вреда при прекращении предварительного следствия. Целью настоящего исследования было изучение действий следователя по обеспечению возмещения вреда, причиненного уголовно наказуемым деянием, при прекращении предварительного следствия. Авторы использовали целостный подход, включающий общенаучный метод, системный анализ, синтез и сравнительно-правовой анализ. Результаты показали, что независимо от формы прекращения необходимо принять меры по компенсации потерпевшим от преступных деяний. К ним относятся обжалование незаконных решений, подготовка исков о защите прав и компенсации в гражданском судопроизводстве. Компенсация вреда остается приоритетом на протяжении всего досудебного производства, даже после его прекращения.

**Ключевые слова:** досудебное уголовное судопроизводство; Уголовное дело; Следователь; прокурор; Прекращение уголовного дела.

## A. INTRODUCTION

As for the classical understanding of the termination of the preliminary investigation, we should note that in the science of criminal procedure, there are two traditionally distinguished forms: the termination of a criminal case and the end of a preliminary investigation by drawing up an indictment and sending a criminal case to a prosecutor for subsequent transfer to the court. ([Svirin, et.al., 2022](#))

The end of the preliminary investigation can be described as the final stage of pre-trial proceedings which obliges the investigator to assess the collected evidence and, on their basis, guided by the relevant provisions of the legislation on criminal procedure, to make a correct and reasoned procedural decision. ([Afanasev, 2019](#); [Agafonov et al., 2023](#))

## B. METHODS

The general scientific method of cognition is the main method of this research. It helps analyze the debatable issues related to the activities of the investigator to compensate for the harm caused by the crime when determining the form of termination of the preliminary investigation. The method of a systematic approach plays a crucial role in this study as it allows for a comprehensive analysis of the various organizational, procedural, and managerial aspects involved in the investigator's efforts to compensate for the harm caused by a criminal act.

Furthermore, analysis and synthesis serve as essential tools to identify and understand the current problems and challenges faced by investigators while seeking to compensate for the harm caused by criminal activities during the determination of preliminary investigation termination. Through a careful analysis of the available data and synthesis of relevant information, the researchers gain valuable insights into the strengths and weaknesses of existing approaches, leading to a more informed and nuanced understanding of the issue.

In addition, the application of the comparative legal method allows the researchers to explore and analyze both domestic legislation and foreign experiences in regulating the investigator's activities concerning harm compensation during the preliminary investigation's termination. This method is useful to identify existing problems, propose ways to solve them, and formulate specific ideas.

This holistic approach enhances their ability to gain new and valuable knowledge about the intricacies and challenges involved in compensating for the harm caused by criminal acts, ultimately contributing to the advancement of the field and potential improvements in the criminal justice system.

### C. RESULTS AND DISCUSSION

It is important to mention that the stage of completion of the preliminary investigation includes a certain set of procedural actions and decisions that aim to verify the comprehensiveness, and objectivity of the evidence collected during the preliminary investigation, registration of investigative proceedings in accordance with the requirements of the law. ([Grudtsina et al., 2022](#))

It seems relevant to argue that the end of the preliminary investigation in any of its forms takes place only after the investigator has assessed all the collected materials and has concluded that:

- All the circumstances to be proved have been reliably established, and are sufficient for the court to make a lawful and justified final decision when considering the criminal case on the merits;
- Further investigation seems inappropriate, since the circumstances that will entail the termination of the criminal case (criminal prosecution) have been reliably established. Taking into account the research topic under consideration, such circumstances may be the termination of a criminal case due to the reconciliation of the parties (Art. 25 of the Code of Criminal Procedure); the termination of a criminal case or criminal prosecution due to the imposition of a judicial fine (Art. 25<sup>1</sup> of the Code of Criminal Procedure); the termination of criminal prosecution in connection with active repentance (Art. 28 of the Code of Criminal Procedure); termination of criminal prosecution due to the compensation for damage (Art. 28<sup>1</sup> of the Code of Criminal Procedure).

It should be emphasized that the investigator makes any of the decisions mentioned above only after a detailed and thorough study of all the materials collected and an assessment of each evidence separately as well as in total. Such a thorough study of all the materials collected during the preliminary investigation is reasoned by the fact that it is necessary to make a legitimate and reasoned decision to complete the preliminary investigation. Thus, after the evaluation of all the collected evidence, the so-called discretion of the investigator is manifested, which requires a sphere of legal possibilities in which the authorized person could choose an appropriate way of conduct ([Marfitsin, 2003, p. 162](#)). In this case, it regards making one of the decisions in question. The decision to terminate the

criminal case (criminal prosecution) and the decision to send the criminal case with the indictment to the prosecutor for subsequent transfer to the court is connected with a parallel comprehensive set of organizational and procedural measures aimed at compensating for the harm caused by the criminally punishable act.

It seems necessary to highlight that the end of the preliminary investigation, like any other stage of criminal proceedings, has its own tasks that must be completed by the investigator before making a final procedural decision on the completion of pre-trial proceedings in a criminal case. Moreover, the investigator should not predetermine in advance the form of the end of the preliminary investigation preferring the termination of the criminal case or the referral of the criminal case to the prosecutor with a further "judicial perspective".

It is after the tasks of the stage in question that officials conducting a preliminary investigation based on objective data and guided by the provisions of the Code of Criminal Procedure are obliged to make a lawful and justified final decision entailing the end of the pre-trial stages of criminal proceedings. ([Kurbatkaya et al., 2022](#))

Having analyzed the opinions of scientists in the legal process ([Lyashchev, 2007, p. 41](#); [Mantsurov, 2005, p. 75](#); [Pushkarev et al., 2021, p. 405](#); [Saveliev, 2003, p. 31](#)), the authors formulate the following algorithm of the investigator's actions at the completion of the preliminary investigation depending on the final procedural decision they make. In this regard, it should be noted that the following measures are conceptual in this algorithm of the investigator's actions and decisions at the stage of pre-trial proceedings in question:

- Verification of each evidence available in the materials of the criminal case for relevance, admissibility, reliability, and the totality of the collected evidence for its sufficiency (Part 1 Art. 88 of the Code of Criminal Procedure);
- Adoption of a decision to terminate the proceedings aimed at collecting evidence based on the assessment of the already available materials of the criminal case (Part 1 Art. 158 of the Code of Criminal Procedure);
- Organization and systematization of all materials of the criminal case in order to create a single numbered register and binding of materials in the required number of volumes (Part 1 Art. 217 of the Code of Criminal Procedure).

From this point on, the algorithm of actions and decisions of officials conducting a preliminary investigation varies and in making a final procedural decision they perform a certain range of activities with a focus on a specific form of completion of pre-trial proceedings.

It seems rational to propose an algorithm of the investigator's actions which he must adhere to when deciding to terminate a criminal case (criminal prosecution):

- Making a decision to terminate a criminal case (criminal prosecution) if there is a basis for making such a procedural decision (Art. 212 and 213 of the Code of Criminal Procedure);
- The activities of officials conducting a preliminary investigation to duly notify the participants in pre-trial proceedings of their final procedural decisions (Part 4 Art. 213 of the Code of Criminal Procedure);
- The investigator's actions aimed at resolving all issues arising from his decision to terminate a criminal case (criminal prosecution): the abolition of the preventive measure chosen against a suspect (accused); return of property seized from a suspect (accused) in case when the facts of its acquisition by criminal means or for valuables obtained by criminal means have not been confirmed; the abolition of the chosen measure of procedural coercion in the form of seizure of property;
- Adoption of measures aimed at compensating for harm to persons illegally brought to criminal responsibility, victims as a result of illegal actions of the pre-trial investigation bodies and the procurator.

If the investigator makes a procedural decision to send a criminal case with an indictment to the prosecutor for further transfer to the court, the initial algorithm of their actions is supplemented by the following range of mandatory measures:

- The activities of officials conducting a preliminary investigation to duly notify the participants in pre-trial proceedings of the final procedural decisions they have made (Part 1, 2 Art. 215 of the Code of Criminal Procedure);
- Familiarization of the participants in pre-trial proceedings with the materials of the criminal case (Art. 216, 217 of the Code of Criminal Procedure);
- The investigator's actions to consider and resolve applications (Art. 121, 122 of the Code of Criminal Procedure);
- The investigator's actions to establish and eliminate the circumstances that have contributed to the commission of crimes (Part 2 Art. 158 of the Code of Criminal Procedure);
- Preparation of an indictment, the formation of a list of persons to be summoned to a court hearing as well as a note on the progress of the criminal case (Art. 220, 225, 226<sup>7</sup> of the Code of Criminal Procedure);
- Sending the indictment together with the materials of the criminal case to the prosecutor for making a decision (Part 6 Art. 220, Part 4 Art. 225, Part 8, 9 Art. 226<sup>7</sup> of the Code of Criminal Procedure);

- The investigator's actions in a criminal case returned by the head of the investigative body to conduct an additional investigation in the exercise of the powers provided for in Para. 11 Part 1 Art. 39 of the Code of Criminal Procedure;
- The investigator's actions in a criminal case returned by a procurator to conduct an additional investigation or to re-draw up an indictment in the exercise of the powers provided for in Para. 2 Part 1 Art. 221, Para. 2 Part 1 Art. 226, Para. 2 Part 1 Art. 226 of the Code of Criminal Procedure. Thus, presenting the algorithm of the investigator's actions at the stage of completion of the preliminary investigation, it can be concluded that before proceeding to this stage, participants in criminal proceedings must perform procedural actions in order to determine the correct form of completion of pre-trial proceedings in criminal cases.

Given the objectives of the present study, this issue is also relevant since the actions aimed to compensate for the harm caused by the crime continue at this stage of pre-trial proceedings regardless of the form of its termination. The resolution of these issues should occupy a central place in pre-trial proceedings in criminal cases since even the fact of termination of a criminal case (criminal prosecution) does not deprive victims of the right to compensation for the harm ([Nguyen, 2021, p. 211](#)). Other legal measures can be taken to ensure compensation for harm, namely, appeal against illegal decisions of the investigator to terminate the criminal case (criminal prosecution); preparation of a claim for the protection of their rights and compensation for harm in civil proceedings ([Nikonovich et al., 2022](#)).

On the basis of the foregoing, we consider it possible and necessary to dwell on the question of the direct or indirect impact of the facts of compensation for the harm caused by the crime on the choice of a specific form of completion of the preliminary investigation.

In this regard, the authors feel strongly that the fact of real and full compensation for the harm caused by the crime, proved by the materials of the criminal case, undoubtedly, cannot unequivocally affect the decision on the completion of the preliminary investigation in one form or another. However, attention should be drawn to the aspect that this circumstance is considered by the investigator since the fact of compensation and reparation for the harm caused by the crime either exempts from criminal liability (Art. 25, 25<sup>1</sup>, 28, 28<sup>1</sup> of the Code of Criminal Procedure), or significantly mitigates the punishment (Art. 61 of the Criminal Code).

At the same time, the facts of active assistance in the search for property obtained by criminal means as well as voluntary compensation for property

damage and compensation for moral damage should find their reliable confirmation in the materials of the criminal case. This information confirmed by the materials of the criminal case not only mitigates the punishment (Art. 61 of the Criminal Code of the Russian Federation) ([Bondareva & Bondareva, 2015, p. 55](#)) but is also, subject to other conditions specified in the criminal procedure law, entails exemption from criminal liability. The position in question can be also crucial for the Russian penitentiary system since the occupancy rate at correctional institutions is high. It is also important that voluntary compensation for the harm caused by the crime creates criminal law “privileges” for the suspect (accused) expressed in the absence of a criminal record.

In view of the foregoing, the authors consider it expedient to expand the boundaries of the possible use of the facts of voluntary compensation for the harm caused by the crime in terms of the application of the provisions of the criminal law mitigating the punishment. Foreign experience also shows that the initiative of a guilty person to voluntarily compensate for harm should be accepted and implemented by officials conducting criminal prosecution at any stage of criminal proceedings, up to the removal of the court to the deliberation room for sentencing. Thus, Art. 22 of the Criminal Code of Spain stipulates that mitigating circumstances are the actions of the perpetrator aimed at compensating for the damage caused to the victim or eliminating its consequences at any stage of the proceedings in the case before sentencing ([Kuznetsova & Reshetnikov, 1998, p. 32](#)).

In this section of the study, we consider the main aspects relating to the issues of ensuring compensation for harm caused by a criminally punishable act which affects the validity of a certain procedural decision at the end of the preliminary investigation.

We should note that officials conducting pre-trial proceedings often make unreasonable decisions when determining the form of completion of the preliminary investigation. However, it should be mentioned that the preliminary investigation ends only when the investigator has fully clarified and reviewed all the circumstances to be proved in the criminal case.

In addition, under the provisions of Para. 4 Part 1 Art. 73 of the Code of Criminal Procedure of the Russian Federation, among these circumstances the nature and the amount of harm caused by the crime are also included. It should be clarified that when deciding on the completion of a preliminary investigation, the investigator must be convinced that he has not only proved the nature and extent of the harm caused by the crime but has also taken measures aimed at ensuring compensation for harm to crime victims.



## D. CONCLUSIONS

Summarizing the results of this study, the authors focus on the following conclusions.

The investigator's actions to ensure compensation for the harm caused by the crime shall be diverse and complex throughout the pre-trial proceedings. At the same time, at the stage of completion of the preliminary investigation, regardless of the procedural decision taken, the investigator must take all measures aimed at restoring the rights of victims of criminal acts and at full compensation for the harm caused to them.

The issue of compensation for harm caused by a criminally punishable act is one of the priority areas of the investigator's activity at the stage of completion of the preliminary investigation since it continues at this stage of pre-trial proceedings regardless of the choice of one or another form of its termination. The resolution of these issues should occupy a central place in pre-trial proceedings in criminal cases since the fact of termination of a criminal case (criminal prosecution) does not deprive the victims of criminal encroachments of the rights to compensation for the harm.

When the investigator decides to terminate a criminal case (criminal prosecution), the following procedural methods shall be implemented to achieve the goal of compensating for the harm caused by the crime and restoring social justice: appealing against the unlawful decisions of the investigator to terminate the criminal case (criminal prosecution); preparation of a claim for the protection of their rights and compensation for harm in civil proceedings.

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