JURNAL CITA HUKUM (Indonesian Law Journal)
FSH UIN Syarif Hidayatullah Jakarta
Vol. 12 No. 1 (2024), pp. 1-12, DOI: 10.15408/jch.v12i1.37741

Restitution as a Prerequisite for Case Termination: Analyzing Conditional Exoneration in Russian Criminal Procedure*

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10.15408/jch.v12i1.37741

Abstract
In this scholarly article, the researchers methodically examine the protocols involved in discontinuing criminal cases through the conciliation of the involved parties, as well as ceasing criminal prosecution on the grounds of active contrition, contingent upon the pivotal requirement of recompensing the damage inflicted by the criminal act. The study substantiates that the investigator, or the individual responsible for the preliminary inquiry, bears the mandatory duty to ascertain, via investigative measures, that the injury wrought by the criminal offence has been comprehensively redressed. The authors delineate that the transcript of the victim's interrogation is the most prevalent procedural document, signifying that the conciliation procedures are mutually satisfactory, voluntary, and indicative of the parties' willingness and preparedness to reconcile. Conclusively, the authors infer that exemption from criminal accountability and the consequent cessation of the criminal case, predicated upon reconciliation or earnest remorse, is contingent upon the substantiated evidence of actual compensation for the harm engendered by the criminally punishable deed.
Keywords: Preliminary Investigation; Reconciliation of the Parties; Termination of Criminal Prosecution; Active Repentance; Interrogator.

* Received: October 20, 2023; revised: November 22, 2023; accepted: March 12, 2024; published April 30, 2024.
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A. INTRODUCTION

The protocols involved in discontinuing criminal cases typically vary depending on the legal jurisdiction. The most common elements across many systems can be retrieved. The first of these elements is the reconciliation of the involved parties. It involves the defendant and the victim reaching an agreement to settle the matter out of court. This is often applicable in cases involving minor offences or where the victim has suffered harm that can be compensated or repaired. The next one is restorative justice. This is a process where all stakeholders affected by criminal behaviour come together to decide how to repair the harm caused. It focuses on the needs of the victims, the community, and the offenders and encourages taking responsibility and making amends.

In some jurisdictions, the defendant may agree to plead guilty to a lesser charge in exchange for a more lenient sentence or the dropping of more severe charges. Plea bargaining is a standard method of resolving cases without going to trial. In cases where the law allows, showing evidence of active repentance or contrition, such as making amends or undergoing rehabilitation, can lead to a discontinuation or reduction of charges.

Certain jurisdictions have diversion programs for offenders, particularly first-time or minor offenders. These programs may include education, rehabilitation, community service, or other alternatives to traditional criminal justice proceedings. In some cases, criminal proceedings may be discontinued if the statute of limitations for the crime has expired. This means that legal proceedings must begin within a specific time frame after the crime is committed.

Additionally, the case may be dismissed if there is insufficient evidence to prove the defendant's guilt beyond a reasonable doubt. Prosecutors may decide not to pursue a case due to various factors, including the severity of the crime, the evidence available, and resources. Judges also have the discretion to dismiss cases under certain circumstances based on the legal standards and evidence presented. In some instances, legal technicalities, immunities, or procedural issues can lead to the discontinuation of a criminal case.

Acknowledging that implementing these protocols is significantly influenced by the specific legal framework and the characteristics of the criminal case under consideration is imperative. Initially, it is prudent to examine two well-established grounds in investigative practice: the cessation of a criminal case owing to the reconciliation of the involved parties (as stipulated in Article 25 of the Code of Criminal Procedure) and the discontinuation of criminal prosecution

due to active repentance. (outlined in Article 28 of the Code of Criminal Procedure)

The cessation of a criminal case (or criminal prosecution) on these grounds is enacted under the conditions prescribed in the provisions of Articles 25 and 28 of the Code of Criminal Procedure. Notably, in both instances, a critical prerequisite is the verification of reparation for the damage inflicted upon the victims of the crime.

B. METHODS

The methodological foundation of this research is anchored in the general scientific method of cognition, which facilitates the examination of the processes for terminating criminal cases due to the reconciliation of parties and ceasing criminal prosecution owing to active repentance. This examination is contingent upon a pivotal criterion: the reparation for damages incurred by a criminally punishable act.

In this investigation, several specific scientific methodologies were employed:

Formal-Logical Method: This approach involves a detailed analysis of the procedures for terminating criminal cases due to party reconciliation and ceasing criminal prosecution because of active repentance, explicitly focusing on compensation for harm caused by criminally punishable acts.

Comparative Legal Method: Utilized to scrutinize the same procedures, this method involves a comparative analysis, drawing insights from various legal frameworks and practices as referenced in studies by Nguyen (2021) and Parfenova (2012), to understand different approaches toward the termination of criminal cases and prosecution in scenarios involving reconciliation and active repentance.

Statistical Method: This encompasses the collection and analysis of data pertaining to the termination of criminal cases due to party reconciliation and the cessation of criminal prosecution in instances of active repentance, particularly in cases where the victims of criminal acts have been duly compensated.

Sociological Method: A specialized sociological approach was adopted, involving the conduct of surveys among investigators and heads of investigative bodies. This method aims to gather and analyze their perspectives and

experiences regarding the termination of criminal cases and prosecution under the specified conditions.

Each of these methods contributes distinct insights and analytical depth, enriching the study's examination of the procedural aspects involved in the termination of criminal cases and prosecution under specific legal conditions.

C. RESULTS AND DISCUSSION

Contemporary Russian scholars specializing in procedural studies are increasingly focusing on the "institution of mediation," a concept borrowed from international legal systems. This mediation, a component of what is termed ' restorative justice,' is gaining attention for its potential to transform the traditional, predominantly punitive approach of criminal procedures, which primarily focuses on penalizing the guilty. Notable references in this area include works by Arutyunyan (2012, p. 98), the Plenum of the Supreme Court of the Russian Federation (2013), Solovyova & Shinkaruk (2013, p. 41), and Volosova & Barabanova (2013, p. 44). This shift is seen as particularly pertinent given the traditional marginalization of restoring victims' rights and compensating for their losses (Pushkarev et al., 2021), a practice increasingly viewed as incongruent with modern global standards for safeguarding the interests of individuals, society, and the state.

Within this context, some scholars advocate for the formal integration of mediation procedures into the Russian criminal process. For instance, A.P. Guskova suggests enacting a specific law on mediation to govern legal relations within criminal proceedings. As innovative elements, Guskova (2010, p. 36) proposes the inclusion of a "mediator" as an independent entity in criminal proceedings to facilitate dispute resolution and the development of a formal agreement format to document reconciliations between parties.

Concurrently, I.V. Bolshakov (2006, p. 79) argues for formalizing such agreements as procedural documents, which should be mandatorily included in criminal case materials. However, Bolshakov's proposition lacks specificity regarding the nature and format of the suggested document, leading to diverse interpretations of the agreement's essence and purpose. I.A. Sivin (2010) proposed the establishment of a “mediator body” to assess the willingness of parties in a criminal process to conclude the case through reconciliation. However, this proposition appears incongruent with the established framework of criminal proceedings. As outlined in Articles 20 and 21 of the Code of Criminal Procedure, the role akin to such a body is typically fulfilled by the individual

conducting the preliminary investigation in cases of public or private-public prosecution or by a magistrate in cases of private prosecution.

Conversely, R.G. Khasanshina (2014, p. 141) references the Federal Law of 27.07.2010 No. 193-FZ "On an Alternative Procedure for Resolving Disputes with the Participation of a Mediator (Mediation Procedure)" (State Duma of the Federal Assembly of the Russian Federation, 2010). This law primarily governs legal relations in civil, labour, and family disputes but does not explicitly mention its applicability in criminal proceedings. Nevertheless, it is worth considering an alternative perspective. Contrary to R.G. Khasanshina's viewpoint, it can be argued that according to Part 5, Article 1 of this act, the mediation procedure is expressly excluded from application to collective labour disputes and disputes arising from civil legal relations. This includes those pertaining to entrepreneurial and other economic activities, in addition to disputes emanating from labour relations and family legal relations, significantly when such disputes may impinge upon or potentially influence public interests.

Given the present formulation and acknowledgement that most claims in pretrial and judicial proceedings in criminal cases are often transferred to civil proceedings by judicial decision, it appears justifiable to apply the provisions of this legal act to resolve claims in criminal cases of private prosecution.

In this context, the legislative approach of the Republic of Kazakhstan merits attention. Since January 1, 2015, Kazakhstan has implemented a new Code of Criminal Procedure, which has significantly altered the trajectory of criminal proceedings compared to Russia, particularly concerning the issue of compensating for harm caused by a crime. Specifically, Article 85 of the Republic of Kazakhstan's Code of Criminal Procedure introduces the role of a mediator in criminal proceedings, outlining their rights and duties. Notably, the mediator is characterized as an independent party engaged by the involved parties to facilitate mediation in compliance with legal stipulations. Furthermore, Paragraph 1 of Part 2 of Article 85 specifies that mediators are entitled to access information made available to the parties by the entity overseeing the criminal process. This clause distinctively delineates the mediator's role from the procedural activities of the bodies and officials responsible for state-led criminal prosecution, as the mediator does not independently address issues of harm compensation or potential case termination (criminal prosecution). Consequently, their role in effectively resolving matters related to victim rights restoration and the efficacy of the conducted compensation procedures appears to be nominal.

However, it seems premature to speculate on transforming the Republic of Kazakhstan's Code of Criminal Procedure or developing a similar legislative proposal or amendments to the Russian Federation's domestic criminal procedure legislation. This hesitation is based on the stipulation of Part 1 of Article 21 of the Code of Criminal Procedure of the Russian Federation, which mandates that in cases of private-public and public prosecution, criminal prosecution is conducted on behalf of the state.

Several authors, notably Volosova & Barabanova (2013, pp. 43-44), advocate for the integration of mediation procedures, traditionally employed in civil law, into the criminal procedural framework. They suggest augmenting Article 6 of the Code of Criminal Procedure of the Russian Federation to mandate the exploration of resolving criminal law conflicts through the engagement of an independent mediator. This approach is posited as an alternative to traditional criminal prosecution and the imposition of penal sanctions on the guilty party. Such an innovation is considered conceptual, with the potential to effectively address the issue of comprehensive and tangible compensation for harm caused by criminal activities, potentially culminating in the cessation of further criminal prosecution. However, the feasibility of applying such conciliation procedures universally is questioned, mainly due to the inherent social dangers posed by many criminally punishable acts. These acts often result in harm not only to individuals but also to broader societal and state interests, as highlighted by Pushkarev et al. (2019).

Furthermore, the critical role of investigators and individuals responsible for initial inquiries, who act as official representatives of the State in conducting criminal prosecutions, is underscored. It is posited that only these official participants possess the requisite authority to enact measures ensuring compensation for harm caused by criminal acts. In this context, other entities, such as mediators, are deemed incapable of addressing these tasks owing to their lack of governmental authority.

Despite these considerations, the application of specific conciliation procedures derived from the institution of mediation in pretrial proceedings to terminate a criminal case or prosecution is not precluded. Nonetheless, it is imperative to ensure that all reconciliation-related activities within criminal proceedings aimed at addressing the harm caused by the crime are conducted under the strict supervision of the official overseeing the preliminary investigation.

Consequently, it becomes essential to concentrate on the veracity of the reconciliation between parties and the alleviation of harm caused by the crime.

An analysis of criminal case materials indicates the existence of this issue, necessitating a judicious approach toward its resolution.

Article 25 of the Code of Criminal Procedure and Article 76 of the Criminal Code of the Russian Federation underscore the necessity of rectifying harm inflicted upon victims. However, the legislation lacks explicit guidelines regarding the mechanisms for such compensation. In contrast, the term "reparation" suggests a broader latitude for the parties involved to determine the means and magnitude of compensation for harm and other facets of the restoration process. (Pushkarev et al., 2022) It is imperative, however, that any measures undertaken to make amends comply with the law and uphold the rights and legitimate interests of the concerned parties. Furthermore, it is paramount to verify amends made by the suspect or accused. The primary procedural document reflecting the satisfaction of both parties with the conciliation process, its voluntary nature, and their willingness to reconcile is typically the protocol of the victim's interrogation.

Case analyses reveal that property damage, accounting for 68.9% of cases, frequently undergoes voluntary reparation. Consequently, in most victim interrogation protocols, the discussion centres around compensation for property damage.

In instances of voluntary harm compensation, it is incumbent upon the investigator or individual conducting the initial inquiry to include a declaration from the victim in the criminal case file. This declaration should confirm the receipt of compensation and acknowledge the absence of further material claims against the accused (or civil defendant). This statement must be ascertained to have been made willingly by the victim, free from coercion or pressure from the accused or their relatives. Moreover, interviewing the victim about the reconciliation process and its terms is advisable.

An agreement between a suspect and a victim, even when formalized in the presence of an investigator, does not automatically guarantee total compensation for harm or the settlement of any remaining amounts. These agreements are prone to violation, particularly by the suspect or accused, since the termination of the criminal case may eliminate the obligation for additional compensation. In such instances, the victim might be compelled to initiate civil litigation, utilizing the previously prepared protocol or other relevant documents to support their claims. This scenario casts doubt on the practicality of specific scholarly suggestions to incorporate any unresolved debts of the suspect or accused into the victim's reparations. Therefore, the decision by the investigator or individual conducting the preliminary inquiry to conclude the criminal case

(or prosecution) against the suspect or accused should be contingent upon the complete compensation of harm to the victim.

Moreover, the reconciliation between the suspect (or accused) and the victim and the compensation for harm caused by the crime must be adequately documented in the criminal case materials. This includes verification and establishment of these actions, as indicated by Himicheva et al. (2001, p. 53), and should be reflected in the interrogation protocols of both the victim and the suspect (or accused), as well as in the decision to terminate the criminal case (or prosecution).

An examination of these termination decisions reveals that the reconciliation between the accused and the victim is typically denoted by a few standard phrases without detailing the specific methods and forms of harm compensation. This trend is prevalent in the majority of the examined criminal cases. Decisions terminating criminal proceedings (or prosecutions) provide comprehensive details about the actions taken by the suspect (or accused) for harm compensation, as well as the specific methods of compensation, only in 35.8% of cases. Meanwhile, 37.8% of decisions merely state that the harm to the victim has been compensated and that they hold no further claims against the suspect (or accused). It is also noteworthy that in 29.4% of the decisions, there is merely a reference to Articles 25, 251, 28, and 281 of the Code of Criminal Procedure. These references are made without clarifying the fulfilment of conditions needed for the application of these procedural law provisions, raising questions about the thoroughness and legality of such decisions in discontinuing criminal cases (or prosecutions).

The Supreme Court of the Russian Federation, in its Resolution of the Plenum dated June 27, 2013 (No. 19), articulated guidelines for making amends for harm. This resolution elucidates that "reparation of harm (Part 1, Article 75, Article 76.2 of the Criminal Code of the Russian Federation) encompasses property compensation, which may include monetary restitution for moral damage, providing assistance to the victim, offering apologies, as well as implementing other measures directed at reinstating the rights of the victim violated by the crime, and addressing the legitimate interests of the individual, society, and the State" (Plenum of the Supreme Court of the Russian Federation, 2013). It is pertinent to highlight that these forms of harm compensation ought to be documented in the concluding procedural document prepared by the investigator or interrogator when finalizing the decision in question.

Nonetheless, it is crucial to recognize that the current criminal procedure law does not mandate the inclusion of specific details regarding the actualization

of harm reparation in the decision to terminate the criminal case (or prosecution). This interpretation emerges from a literal reading of the provisions of Part 2, Article 213 of the Code of Criminal Procedure of the Russian Federation. Notably, the ten paragraphs of this section do not encompass an essential element pertaining to the grounds for such decisions. In cases involving reparation and compensation for harm caused by a crime, reliable and verified information about the measures undertaken by the suspect (or accused) must be incorporated into the decision to terminate the criminal case (or prosecution). Based on the foregoing arguments, it appears judicious to propose an amendment to Part 2, Article 213 of the Code of Criminal Procedure, introducing a new subsection, namely, paragraph 7.1, which would outline the "circumstances that served as the basis for the termination of the criminal case (criminal prosecution)."

This proposition emphasizes the necessity for officials involved in preliminary investigations to provide detailed information in their decisions regarding the termination of criminal cases (or prosecutions). This should extend beyond mere references to relevant articles of criminal law and procedural statutes, encompassing a thorough disclosure of all pertinent circumstances surrounding their adoption. In the context of the issue under scrutiny, this would include documenting circumstances that validate the reconciliation of parties, active repentance, and, crucially, the compensation for harm inflicted by the criminal act.

Moreover, it is the incumbent responsibility of the investigator or individual conducting the initial inquiry to rigorously ascertain, through investigative measures, that the harm to the victim has been entirely redressed. It is equally vital to establish that the victim has acknowledged the apology and consents to the termination of the proceedings, either in their entirety or specifically in relation to the individual who has fully compensated for the harm (Plenum of the Supreme Court of the Russian Federation, 2013). Termination of a criminal case (or prosecution) can be considered only if all these conditions are satisfied and there are lawful grounds for such a course of action.

However, prevailing practices indicate a lack of consistency among investigators (and those conducting initial inquiries, along with their supervisors) in applying the provisions of the Criminal Procedure Code pertaining to such decisions. This inconsistency manifests either in unwarranted terminations of criminal cases (or prosecutions), contravening criminal procedural legislation, or failing to terminate cases even when all conditions are met and there are valid grounds for termination.

Furthermore, it is essential to note that for criminal cases involving crimes of minor and moderate severity, the legislation allows for the possibility of terminating the case due to the reconciliation of parties during pretrial proceedings. This can be initiated based on an application from the victim or their legal representative.

D. CONCLUSIONS

In summary, this research elucidates a critical aspect of criminal proceedings: the conditional exoneration of an individual accused of a criminal act. As delineated in this study, the release from criminal liability and the subsequent termination of the criminal case hinge significantly on two key provisions—reconciliation of the parties as per Article 25 and active repentance as per Article 28 of the Code of Criminal Procedure. However, it is imperative to note that these provisions can only be effectively invoked when conclusive evidence demonstrates that the accused has adequately compensated for the harm inflicted upon the victim. This finding underscores the essential role of restitution in the process of criminal justice, highlighting its significance as a prerequisite for the cessation of criminal proceedings under the specified conditions.

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