

**IMPROVING PROCEDURAL CONTROL OVER THE INVESTIGATOR'S  
ACTIVITIES IN COMPENSATING FOR HARM CAUSED BY CRIMES: A LEGAL  
ANALYSIS**

**APERFEIÇOANDO O CONTROLE PROCESSUAL DA ATIVIDADE DO  
INVESTIGADOR NA COMPENSAÇÃO DE DANOS CAUSADOS POR CRIMES:  
UMA ANÁLISE JURÍDICA**

**MEJORANDO EL CONTROL PROCESAL DE LAS ACTIVIDADES DEL  
INVESTIGADOR EN LA COMPENSACIÓN DEL DAÑO CAUSADO POR LOS  
DELITOS: UN ANÁLISIS JURÍDICO**

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**ABSTRACT**

**Objective:** The article reviews the main aspects of procedural control of the head of the investigative body over the investigator's activities to compensate for the harm caused by a crime at the stage of preliminary investigation.

**Methods:** The authors study the implementation of procedural control and highlight the following sources of information on the activities of investigators to compensate for harm caused by a crime: inspection materials of crime reports; inspection materials of criminal cases (both those in progress and those in which the preliminary investigation has been suspended or terminated); complaints and appeals of citizens received by the internal affairs bodies.

**Results:** The authors substantiate the thesis that in order to improve the quality of procedural control over the provision of compensation for harm caused by a crime, it seems timely and expedient to require the heads of bodies to carry out constant registration and quarterly analysis of court decisions in criminal cases in respect of property arrested at the pre-trial stages of the criminal process.

**Suggestions:** The authors suggest creating an interdepartmental normative act that obliges heads of preliminary investigation bodies to constantly register and quarterly analyze court decisions regarding pre-trial seizure of property.

**Key words:** pre-trial proceedings, initiation of criminal proceedings, preliminary investigation, harm caused by the crime.

**RESUMO**

**Objetivo:** O artigo analisa os principais aspectos do controle processual do chefe do órgão de investigação sobre a atuação do investigador para compensar o dano causado por um crime na fase de investigação preliminar.

**Métodos:** Os autores estudam a implementação do controle processual e destacam as seguintes fontes de informação sobre as atividades dos investigadores para compensar danos causados por um crime: materiais de inspeção de relatórios criminais; materiais de inspeção de processos criminais (tanto aqueles em andamento quanto aqueles em que a instrução preliminar foi suspensa ou encerrada); reclamações e recursos de cidadãos recebidos pelos órgãos da corregedoria.

**Resultados:** Os autores fundamentam a tese de que, para melhorar a qualidade do controle processual sobre a prestação de indenizações por danos causados por crime, parece oportuno e conveniente exigir dos titulares dos órgãos o registro constante e análise trimestral das decisões judiciais em processos criminais relativos a bens detidos na fase de instrução do processo penal.

**Sugestões:** Os autores sugerem a criação de um ato normativo interdepartamental que obrigue os chefes dos órgãos de investigação preliminar a registrar constantemente e analisar trimestralmente as decisões judiciais sobre apreensão de bens pré-julgamento.

**Palavras-chave:** instrução processual, instauração de processo penal, investigação preliminar, dano causado pelo crime.



## RESUMEN

**Objetivo:** El artículo revisa los principales aspectos del control procesal del titular del órgano de investigación sobre las actividades del investigador para reparar el daño causado por un delito en la etapa de investigación preliminar.

**Métodos:** Los autores estudian la implementación del control procesal y destacan las siguientes fuentes de información sobre las actividades de los investigadores para reparar el daño causado por un delito: materiales de inspección de informes delictivos; materiales de inspección de causas penales (tanto aquellas en curso como aquellas en las que la investigación preliminar ha sido suspendida o terminada); quejas y recursos de los ciudadanos recibidos por los órganos de interior.

**Resultados:** Los autores fundamentan la tesis de que para mejorar la calidad del control procesal sobre la disposición de la reparación del daño causado por un delito, parece oportuno y conveniente exigir a los jefes de órganos la realización constante de registros y análisis trimestrales de sentencias judiciales. decisiones en causas penales con respecto a los bienes detenidos en las etapas previas al juicio del proceso penal.

**Sugerencias:** Los autores sugieren crear un acto normativo interdepartamental que obligue a los jefes de los órganos de investigación preliminar a registrar constantemente y analizar trimestralmente las decisiones judiciales sobre embargo preventivo de bienes.

**Palabras clave:** diligencias previas al juicio, iniciación del proceso penal, investigación previa, daño causado por el delito.

## INTRODUCTION

Examining procedural control in conventional sense, it should be noted that it implies verification as well as constant monitoring to supervise a certain type of activity (Popovtsev, 2009, p. 154). The authors deem it to be of relevance, since these days the issues of the effectiveness of the activities of state authorities in compensating for criminally caused harm, protecting victims of criminal encroachments and, consequently, the restoration of social justice are becoming more urgent.

Criminal investigations are a critical component of the justice system in any country. The effective functioning of a criminal investigation is essential for upholding the rule of law, ensuring justice, and protecting the rights of individuals involved in criminal cases (Ivanov, Makeev, Polyakov, Alimamedov, 2022). One crucial aspect of a criminal investigation is the need to compensate for the harm caused by a criminal offense. The compensation process is crucial as it aims to restore the victim to their pre-offense condition and ensure that they are not left to bear the consequences of the crime alone. However, ensuring the effectiveness of the compensation process is often challenging, requiring comprehensive procedural control measures to be put in place (Ali et al., 2022).

Procedural control is a vital aspect of ensuring that the compensation process is effective. It involves the use of various tools and techniques to monitor the actions of



investigators and ensure that they comply with the requirements of the law. The lack of procedural control can lead to violations of the rights of victims and individuals involved in the criminal process. As such, there is a need for constant and effective procedural control measures to be in place to ensure that investigators carry out their duties effectively (Alkhseilat et al., 2022).

In this regard, the role of the heads of the preliminary investigation bodies is crucial. They play a vital role in ensuring that the compensation process is effective by implementing procedural control measures to monitor the actions of investigators. These measures include the consideration of complaints and appeals, the return of criminal cases by prosecutors for additional investigation, and the improvement of official inspections (Alimamedov et al., 2022). Additionally, the leadership of the preliminary investigation bodies should conduct a weekly analysis of the results of the work of investigators to ensure that the compensation process is effective.

This article aims to explore the main aspects of procedural control of the head of the investigative body over the investigator's activities to compensate for the harm caused by a crime at the stage of preliminary investigation. By analyzing the different procedural control measures and their effectiveness, we aim to provide insights into how to improve the compensation process and ensure that victims receive the justice they deserve.

## **MATERIALS AND METHODS**

The methodological basis of the study is the general scientific system method of cognition used to examine the current directions of procedural control of the head of the investigative body over the investigator's activities to compensate for the harm caused by the crime.

In this study, the authors apply the following scientific methods:

- the formal-logical, which consists in the analysis of current areas of procedural control of the head of the investigative body over the investigator's activities to compensate for the harm caused by the crime at the stage of the preliminary investigation;
- the comparative legal method which is used to analyze the features of the procedural control carried out by the head of the investigative body over the investigator's activities to compensate for the harm caused by a crime;
- the statistical method which includes the collection and analysis of information on the activities of the head of the investigative body to ensure that the investigator provides compensation for harm caused by a crime;



- the specific sociological method which is used in the sociological survey of investigators and heads of investigative bodies.

## RESULTS AND DISCUSSION

It seems reasonable to include in the range of powers of the head of the investigative body the obligation to give instructions on the adoption of decisions and the conduct of procedural actions aimed at ensuring compensation for the harm caused by a crime. It can be assumed that, for example, instructions on the direction of the preliminary investigation (para 3 part 1 Art. 39; para 2 part 3 Art. 40<sup>1</sup> of the Code of Criminal Procedure of the Russian Federation), the return of a criminal case to the investigator with his instructions to conduct an additional investigation (para 10 part 1 Art. 39 of the Code of Criminal Procedure) may also involve measures aimed at ensuring compensation for the harm caused by a crime.

At the same time, certain legislative references in the provisions of the criminal procedure law will only add relevance to this type of activity of the investigator and will once again correctly remind the latter to make additional efforts in this area.

The authors establish that along with the problematic issues in this area of activity, there are other reasons for the negative aspects identified in the work of the investigative bodies.

The analysis of the practice of compensation for harm shows that until criminal cases are initiated, measures are not taken to compensate for it, everything is limited to the seizure of part of the stolen goods during a personal search. Reports on the work done are of a formal nature. Once the case is initiated, the investigators are not active, limiting themselves to sending instructions to which they receive formal answers, or do not take any measures at all. There are cases of non-fulfillment of qualitatively prepared instructions of investigators, which are crucial for the proper result. There are facts of unsatisfactory quality of materials from economic security units, for which no measures are taken during pre-investigation inspections to compensate for harm, and everything is limited to awaiting documents indicating signs of a crime, the course and direction of inspections with the heads of the investigation are not coordinated, joint plans are not developed.

The reasons for the identified violations, which are systemic and negatively affect the rate of compensation for the harm caused by a crime, are due to miscalculations in the



implementation of procedural control by the heads of investigative bodies over the work to restore the rights of crime victims.

These negative dynamics has developed because the leadership of the preliminary investigation bodies often carries out, in the opinion of Yu.A. Shemraeva (2014) “superficial control, based on an oral report on the progress of the investigation and the decisions taken. Acquaintance directly with the materials of criminal cases is carried out in exceptional cases: on “resonant” crimes, due to the complaints of participants or at the prosecutor’s request”. The authors believe that the leadership of the preliminary investigation bodies should be obliged to get acquainted not only with the materials of criminal cases, but also with another array of documents that carry significant information directly related to the provision of harm compensation.

The authors suppose that in order to correct the negative trend that has formed, it is necessary to identify sources of information on the state of joint work of officials conducting a preliminary investigation and employees of inquiry authorities, as well as other public authorities in this area. In particular, various materials are the sources to obtain this information by the heads of the investigative bodies.

First, it is necessary to highlight the materials of crime report inspections. It should be noted that there are problems in this activity of officials authorized to review crime reports and make procedural decisions on the basis of the collected materials. Some researchers state that one of the reasons is the direct impact of reporting in the formation of criminal law statistics.

At the same time, it is at the stage of initiating a criminal case that primary information appears. It includes the nature and amount of the harm caused by a crime, and it requires prompt verification, subsequent confirmation or refutation in order to make a legal decision within the framework of the provisions of Articles 144 and 145 of the Code of Criminal Procedure.

Given the context, the initiative of the leadership of the Main Investigation Department of the Ministry of Internal Affairs of the Russian Federation in Moscow, is to develop, together with the CID and the UEBiPK, an algorithm for the production of investigative actions and operational-search measures, which will make it possible to timely carry out a set of measures aimed at identifying property subject to arrest as part of the ongoing inspections at the initial stage of the investigation. In the future, it is proposed to send this algorithm in the form of memos to the territorial divisions of the internal affairs bodies to provide them to all investigators and employees of operational units.





The authors consider it appropriate to include also a recommendation for operational units in this algorithm to reflect in the materials of pre-investigation inspections information about the property status of persons in respect of whom the inspection is carried out, as well as the members of their families, at the beginning and at the end of the inspection. In our opinion, this provision will not only strengthen the procedural component of ensuring compensation for the harm caused by a crime but will also give a new impetus to the operational-search aspect of this type of activity.

Within the framework of procedural control, another equally important source of information for the heads of pre-trial investigation bodies on the investigator's activities in establishing the nature and extent of the harm caused by a crime is the inspection materials of criminal cases, both those in progress and those for which the preliminary investigation has been suspended or terminated. Based on the study of criminal cases, the rational step of each head in this case is to further summarize and carefully analyze the results of the work of subordinate employees and take urgent measures to intensify this activity together with operational units.

Citing a list of criteria for the assessment by the head of the body of the preliminary investigation of criminal cases that are in the production of employees of the unit entrusted to him, O.V. Khimicheva (2004) correctly notes that “the verification of criminal cases under investigation by the investigator is carried out under the compensation for harm caused by the crime”. T.G. Olifirenko (2015) supports O.V. Khimicheva and highlights the establishment of the subject and limits of evidence as one of the actions of the head of the preliminary investigation body when reviewing the materials of criminal cases.

As it has been mentioned, the nature and extent of the harm caused by a crime is one of the elements included in the subject of evidence in the crime investigation (para 4 part 1 Art. 73 of the Code of Criminal Procedure). Thus, it correlates with the issues discussed by the authors.

It is necessary to emphasize the importance of procedural control over the provision of compensation for harm caused by a crime in criminal cases in which the preliminary investigation has been suspended or terminated. In this regard, the heads need to ensure systematic control over the adoption of measures for each unsolved crime and terminated criminal proceedings to identify stolen property, further resume the preliminary investigation, seize the discovered property with subsequent return to the victims.

The legal consequence of proper verification of criminal cases is the setting of tasks in the form of giving instructions in accordance with paragraph 3 of part 1 of Article 39 and



paragraph 2 of part 3 of Article 40<sup>1</sup> of the Code of Criminal Procedure of the Russian Federation.

The authors have studied the materials of criminal cases and analyzed the written instructions of the head of the preliminary investigation body. The results are as follows. In particular, the instructions of heads to improve the effectiveness of the considered direction of activity in criminal cases, which were sent to the court, take place in only 6.9% of cases. This trend does not cause any complaints for two reasons. Firstly, in most cases, the harm caused by a crime was fully voluntarily compensated by the suspect (accused) at the pre-trial stages of the criminal process, as well as forcibly during the investigative actions (inspection, search, seizure) through the return of property and funds belonging to the victims. Secondly, the investigators themselves often simply do not file in criminal cases the instructions of the heads executed by them in order to optimize the volume of materials sent to the court.

At the same time, in terminated criminal cases, the instructions of the head of the preliminary investigation body aimed at intensifying the activities of the investigator to compensate for harm were present in only 23.6% of cases. Approximately similar data have been obtained during the study of criminal cases in which the preliminary investigation was suspended (27.9% of the total number of materials studied). It is the last two positions that cause particular concern because the activities of the investigator, as it has already been proven, should not be limited to the investigation of the so-called “promising” criminal cases. With even greater activity, responsibility and “procedural diligence”, should it be implemented for non-obvious crimes, as well as in cases where there are grounds for terminating the preliminary investigation, especially in connection with the reconciliation of the parties and voluntary compensation for harm (Art. 25 of the Code of Criminal Procedure). At the same time, the head of the preliminary investigation body should be focused on how investigators establish the nature and extent of the harm caused by a crime, as well as the measures taken to ensure its subsequent compensation in all criminal cases without exception.

The results of the criminal cases investigation not only make it possible to ascertain the fact that the investigator has violated the rights and legal interests of the victims but also indicate the lack of effective control over the course of the preliminary investigation by the heads of the pre-trial investigation bodies who, in turn, should carefully study criminal cases before agreeing to extend the period of the preliminary investigation.

The facts of improper procedural control by the heads of the investigative bodies are confirmed by the materials of the criminal cases studied by the authors. Thus, it follows





from the materials of the criminal case investigated by the Main Investigation Department of the Ministry of Internal Affairs of the Russian Federation for the city of Moscow that, despite the fact that the victim and the defendant's defence counsel had requested the termination of the criminal proceedings in connection with the reconciliation of the parties and the making amends for the harm caused (Art. 25 of the Code of Criminal Procedure), the investigator refused to satisfy them. The prosecutor pointed out that the decisions to refuse to satisfy the requests were made by the investigator in violation of the requirements of Part 4 of Article 7 of the Code of Criminal Procedure, since they lacked the reasoning for the decision taken. Based on the results of the internal audit, a decision was made not only in relation to the investigator, who was warned about the prevention of such violations, but also in relation to the head of the department, who was warned about the need to exercise proper procedural control over subordinate employees.

It follows that it is necessary to strengthen procedural control over the completeness of the measures taken by investigators during the investigation of crimes aimed at proving the nature and extent of the harm caused, and the adoption of an exhaustive set of measures that contribute to its real and full compensation. At the same time, it is advisable to impose on the heads of the relevant departments personal responsibility for the results of work in this direction.

The enforceable sentences of criminal courts, that previously have been under the preliminary investigation body, are also a significant source of information characterizing the activities of investigators to compensate for the harm caused by a crime in pre-trial proceedings. At the same time, it is important to note that the head of the preliminary investigation body needs to organize effective bilateral interaction of the units headed by them with the judicial authorities to obtain copies of court verdicts, including the use of the State Automated System of the Russian Federation (SAS) "Justice". All this should be done in order to summarize and analyze information on the value of the seized property sent to the court in criminal cases, in respect of which the court has decided to apply for compensation for harm caused to the victims, to lift the arrest or to confiscate (according to enforceable sentences).

Thus, the aforementioned makes it possible to formulate the thesis that in order to improve the quality of procedural control over the provision of compensation for harm caused by a crime, we consider it timely and expedient to impose on the heads of preliminary investigation bodies the implementation of constant registration and quarterly analysis of court decisions in criminal cases in respect to property seized at the pre-trial stages of the criminal process.



The next source of information for the heads of investigative bodies on the activities of officials conducting a preliminary investigation to ensure compensation for the harm caused by a crime is complaints and appeals from citizens received by the internal affairs bodies in connection with the preliminary investigation. These materials are essential as a source of information for the implementation of due process control to increase effectiveness of activities to ensure compensation for harm caused by a crime.

However, several authors (Ivanov et al., 2022) focus on this source of information since complaints and appeals carry information regarding the results of the investigators' work during the preliminary investigation.

According to A. O. Beketov (2014), the authority to consider complaints by the heads of the preliminary investigation bodies “certainly increases the level of guarantees and protection of the rights of persons involved in the criminal process. When resolving complaints, the head knows better than other subjects authorized to resolve complaints in pre-trial criminal proceedings”. In furtherance of the position of A.O. Beketov, we have studied the practical component of this type of procedural control.

An analysis of the complaints and appeals received by the Investigative Department of the Ministry of Internal Affairs of the Russian Federation show that violations of the requirements of the legislation on criminal procedure are allowed due to the lack of procedural control over the course of the investigation of criminal cases and the poor-quality conduct of inspections by territorial investigative units on primary appeals.

For instance, in January 2015, the Ministry of Internal Affairs of Russia received an appeal from the President of “Transneft”. The reason for this was the incomplete and unmotivated response of the head of the Investigative Department of the Ministry of Internal Affairs of Russia for the Ulyanovsk Region, sent to the joint-stock company on the appeal concerning the investigation of the criminal case initiated on theft of petroleum products from the main oil pipeline owned by “Transneft”. The result of the investigation was heard under the head of the Investigative Department of the Ministry of Internal Affairs of Russia, as well as the heads of the FSB of Russia (Federal Security Service) and “Transneft”. The head of the investigative department of the Ministry of Internal Affairs of the Russian Federation for the Ulyanovsk region was strictly advised to organize a proper investigation of the criminal case and was instructed to take the further course of his investigation under personal control to ensure the effective work of the investigation team in close cooperation with the unit that provides operational support for compensation for harm caused by the crime.



Thus, it should be noted that the proper performance by the investigator of his duties, as correctly noted by V. N. Isaenko (2010) and V. V. Pushkarev et al. (2021), should be facilitated by the constant and effective control of head who now have a set of relevant procedural capabilities. Continuing this idea, we should add that the very activities of the heads of the preliminary investigation bodies often need constant attention both from the higher managers and from the prosecutorial supervision and judicial control.

As for the return of criminal cases by the prosecutor for additional investigation, it should be said that in the future an important role in improving the quality of the work of investigators belongs to the leadership of these units in the process of carrying out procedural control.

As it concerns the prosecutor's return of criminal cases to perform further investigation, it should be mentioned that the departments' heads play a vital role in improving the procedural control. The following measures can be suggested to improve the efficiency of officials performing the preliminary investigation.

First, the results obtained by the management during their thorough analysis of the criminal cases returned by the prosecutor should be considered at operational meetings with the senior staff of the bodies conducting the preliminary investigation. They should also take organizational measures to establish proper control over the organization of work on the investigation of crimes, improving the quality of the preliminary investigation, checking by the heads of criminal cases to their sending to the prosecutor in accordance with Part 6 of Article 220 and Part 4 of Article 225 of the Code of Criminal Procedure. It is advisable for the higher management of the pre-trial investigation bodies to ensure that the circumstances of the preliminary investigation in criminal cases returned by prosecutors are heard, with disciplinary measures taken against subordinate officials who have not ensured proper procedural control over their investigation.

It is also appropriate to develop in some units the practice of quarterly hearing of the heads of pre-trial investigation units who have allowed a reduction in the amount of compensation for harm caused by crimes (Nguyen et al., 2021, 211-220).

The authors consider it expedient to introduce into the activities of the leadership of the preliminary investigation bodies the procedural control over the organization of the work of investigators consisting in the timely registration in information databases of stolen and seized objects with individual numbers.

At the same time, it seems reasonable to provide in the subject of classes held with personnel in the framework of legal and official training, the study of violations and mistakes committed which were the basis for the return of criminal cases by the prosecutor



to conduct an additional investigation. In this regard, it is rational to include in the thematic plans of these classes both the repetition of previously acquired knowledge and the study of changes in legislation highlighting the forms and methods of improving the activities to compensate for the harm caused by a crime.

The authors believe that the management of the bodies conducting preliminary investigation of control and observation cases should conduct a weekly analysis of the results of the work of investigators in this area of activity, which will allow timely forecasting the effectiveness of the measures taken and monitoring the progress of their implementation.

It seems relevant to improve the quality of official inspections for every return of criminal cases with a direct study of them by investigators of control units and giving a proper assessment of the violations committed and the level of procedural control by the heads. In its turn, the analysis of investigative practice shows that these days the quality of the conclusions of official inspections in criminal cases returned for additional investigation often does not meet the requirements. Employees of control units who study criminal cases of this category draw up formal conclusions, rewrite the grounds for the return of criminal cases for additional investigation from the decision of the prosecutor without a thorough study of the cases themselves and the reasons that led to their return, in some cases do not indicate them, or provide unreadable decisions.

At the same time, we consider it necessary to cite facts indicating the proper organization of the activity under consideration by the leadership of the pre-trial investigation bodies.

Thus, the city prosecutor sent a criminal case initiated on the grounds of a crime under Part 4 of Article 159 of the Criminal Code of the Russian Federation to the Main Investigation Department of the Ministry of Internal Affairs of the Russian Federation in Moscow, with a decision to return the criminal case for additional investigation. It transpired from the prosecutor's decision that the examination of the criminal case revealed violations that did not allow the indictment to be approved, since the charges against M. and the indictment violated the law of criminal procedure expressed in the absence of information on the amount of harm caused to the victims and an inaccurate and incomplete reflection of the harm caused. As a result of the internal inspection, the investigator for particularly important cases of the Main Investigation Department of the Ministry of Internal Affairs of the Russian Federation for the city of Moscow was strictly warned to prevent such violations.



It should be added that the leadership of the pre-trial investigation bodies needs to ensure that criminal cases returned for additional investigation are placed under special control in order to exclude the facts of their re-return on the same grounds or in connection with non-compliance with the instructions of the prosecutor.

## CONCLUSIONS

To summarize certain conceptual aspects regarding the improvement of procedural control over the investigator's activities to compensate for the harm caused by a crime, we formulate the following conclusions.

In order to improve the quality of procedural control over the provision of compensation for harm caused by a crime, it is advisable to develop an interdepartmental by-law normative legal act, through the application of which the heads of preliminary investigation bodies should be obliged to carry out constant registration and quarterly analysis of court decisions in criminal cases in respect of property seized in the pre-trial order. Thus, a set of measures will be implemented aimed at ensuring compensation for the harm caused by a crime.

Heads of investigative bodies are obliged to make full use of the powers granted to them by the legislation of criminal procedure and departmental regulatory legal acts to regulate the activities of subordinate employees to compensate for harm caused by a criminally punishable act at all stages of pre-trial proceedings.

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