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The Competence of the Court in Exercising Judicial Control at the Pre-Litigation Stages of the Criminal Procedure

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INTRODUCTION

Relevance of the research topic

Judicial control at the pre-litigation stages of the criminal procedure is one of the most important institutions of criminal procedural law, the application of which is aimed at protecting the constitutional rights and freedoms of the individual.

Having appeared in domestic legislation in connection with the adoption by the Supreme Council of the RSFSR of the Concept of Judicial Reform in the RSFSR in 1991 and the Constitution of the Russian Federation in 1993, judicial control continues to develop, and its new forms appear.

According to the data of the Judicial Department under the Supreme Court of the Russian Federation, in 2023, courts of first instance completed proceedings on 727,190 criminal cases[1]. During the same period, courts of first instance considered at least 1,049,871 petitions of officials authorized to carry out criminal prosecution and complaints of participants in criminal proceedings during pre-trial proceedings in criminal cases[2]. The above statistics indicate that judicial control accounts for a significant share of the courts' workload and is an important functional tool aimed at ensuring the rights and legitimate interests of participants in criminal proceedings. Meanwhile, the legal regulation of judicial control is subject to justified criticism from representatives of the scientific community from the point of view of its insufficient effectiveness in fulfilling the tasks of criminal proceedings. The formalism allowed by the court in the implementation of its control function contributes to the formation of contradictory judicial practice and reduces the level of protection of the constitutional rights of participants in criminal proceedings.

The problems that arise in the practice of implementing judicial control largely stem from the very schematic and superficial legislative regulation of the court’s competence.

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[1] Line 1 of Section 1 of the Report on the work of courts of general jurisdiction in considering criminal cases at first instance for 2023 // Official website of the Judicial Department under the Supreme Court of the Russian Federation. URL: https://cdep.ru/index.php?id=79&item=8809 (date accessed: 31.01.2025).

[2] Ibid. Lines 27-53, 58-61, 93-95 section 4.

The criminal procedure law, while granting the court fairly broad powers to control the legality and validity of restrictions on the constitutional rights of an individual, does not provide it with sufficient procedural means.

As our generalization of judicial practice has shown, when implementing judicial control, courts in almost 100% of cases do not indicate in their decisions that they have assessed the evidence presented by the parties[3]. At the same time, the results of a survey of practitioners showed that 74% of lawyers, 63% of prosecutors, 34.6% of investigators, 31.1% of judges still believe that the court should assess the evidence presented by the parties in its decision. Two thirds of the judges and investigators surveyed noted that the court is authorized to assess evidence only when considering the merits of a criminal case[4].

The data presented, in our opinion, are a consequence of insufficient legal regulation of the content and limits of the court's competence to participate in the process of proof.

This issue has not been resolved in the science of criminal procedure either. Dissertation research offers opposing approaches to the essence of the court's cognitive activity during pre-trial proceedings[5].

The powers of the court to make procedural decisions for judicial control, which constitute its competence, are enshrined in legislation in an internally contradictory manner; some types of decisions are not regulated by law at all, which gives rise to contradictory judicial practice, the generalization of which revealed cases of courts making different types of decisions on the same grounds[6].

Judicial control procedures are not sufficiently regulated, which also forms contradictory judicial practice. For example, in the course of summarizing judicial practice on the consideration of petitions of officials to place a suspect/accused person in custody, at least 7 variants of the sequence of speeches of participants in the court hearing

[3] See Appendices No. 5-7.
[4] See Appendices No. 1-4.
[5] See, for example: Nikitina S.V. Evidentiary activities of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... cand. of legal sciences. Ulyanovsk, 2021. 229 p.; Ustinov A.A. Evidence during consideration of criminal case materials by the court during pre-trial proceedings: diss. ... cand. of legal sciences. Moscow, 2022. 235 p.
[6] See Appendices No. 8-10.

and the announcement by the court of materials of judicial control proceedings were identified[7].

Some representatives of the scientific community propose to unify various procedures of judicial control, while others propose to differentiate them. There are also mixed approaches to this issue.

Taking into account the above, in order to solve the problems of criminal proceedings, a systematic, comprehensive definition of the court's competence in the exercise of judicial control at the pre-litigation stages of the criminal procedure is of particular relevance.

The degree of scientific development of the topic

The works of O. O. Avakov, A. E. Adilshaev, L. A. Aleksandrova, N. A. Andronik, T. I. Andryushchenko, D. M. Berova, I. S. Bobrakova, S. V. Burmagin, N. A. Bydantsev, V. V. Volynsky, L. A. Voskobitova, V. N. Galuzo, P. O. Gertsen, O. A. Glyanko, L. V. Golovko, V. V. Gorban, A. Yu. Epikhin, R. A. Zinets, A. E. Zonova, O. V. Izotova, A. V. Kvyk, N. P. Kirillova, N. N. Kovtun, N. A. Kolokolova, S.I. Konevoy, E.E. Korobkova, N.V. Kosterina, A.V. Kudryavtseva, A.I. Lalieva, V.M. Lebedeva, E.Yu. Likhacheva, N.A. Lopatkina, P.A. Lutsenko, A.A. Maksurova, I.V. Maslova, I.L. Makhorkina, A.O. Mashovets, D.S. Merlakova, N.G. Muratova, A.D. Nazarova, E.V. Noskova, V.M. Petrovets, I.L. Petrukhina, A.V. Piyuka, M.A. Podolsky, S.B. Rossinsky, S.V. Rudakova, V.V. Rudicha, G.S. Rusman, A.P. Ryzhakova, A.N. Ryzhikh, A.S. Sboeva, M.K. Sviridova, A.V. Solodilova, N.G. Stoyko, M.S. Strogovich, I.Yu. Tarichko, R.R. Umyarova, T.M. Khmelnitskaya, I.R. Khromenkov, O.Yu. Tsurluy, I.Yu. Chebotareva, I.V. Chepurnaya, A.S. Chervotkin, P.S. Elkind, R.V. Yartsev and other scientists are devoted to determining the place of judicial control in the system of functions of the judiciary, studying its types, as well as some problems related to the content of the powers of the court, constituting its competence in the course of judicial control activities.

[7] See Appendix No. 8.

Individual issues of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure are covered in the dissertations of A.A. Endoltseva "Judicial Control Procedures in Pre-Trial Proceedings in a Criminal Case" (2023); S.S. Kripinevich "The Institute of Preparation for a Court Hearing and the Forms of Its Implementation in the Pre-Litigation Stages of Criminal Procedure of the Russian Federation" (2019); S.V. Nikitina "Evidential Activities of the Court in Making Procedural Decisions in Pre-Trial Proceedings in Criminal Cases" (2021); E.A. Ovchinnikova "Competence and Powers of the Court (Judge) in Russian Criminal Proceedings" (2020); A.A. Ustinov "Evidence During the Consideration of Criminal Case Materials by the Court During Pre-Trial Proceedings" (2022).

The above-mentioned works, which served as the scientific basis for this study, touched upon only individual aspects of determining the competence of the court in the exercising judicial control at the stages of initiating a criminal case and preliminary investigation, but a comprehensive study of this competence at the monographic level, taking into account modern legislation and modern judicial practice, was not carried out.

Object of study

The object of the study is the system of legal relations that develop in the process of the court’s activities in implementing judicial control at the pre-litigation stages of the criminal procedure.

Subject of study

The subject of the research is the provisions of the Constitution of the Russian Federation related to the object of research, the set of criminal procedural rules regulating judicial control at the pre-litigation stages of the criminal procedure, materials of judicial practice of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and lower courts of general jurisdiction, provisions of the criminal procedural doctrine.

The direct subject of the study is the criminal procedure rules governing three main types of judicial control: selection and extension of the term of preventive measures, granting permission to carry out investigative actions and subsequent verification of their

legality, consideration of complaints of participants in criminal proceedings submitted in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation.

The selection of the specified types of judicial control as a direct subject of the study is due to a number of reasons. Firstly, this is due to their high proportion in the total number of judicial control proceedings completed in 2023 at the pre-litigation stages of the criminal procedure: 97.2%[8]. Thus, these are the most typical judicial control proceedings. Secondly, these types are also identified as the main ones in scientific literature. Thirdly, the given types of judicial control from the point of view of their objectives make it possible to study the criminal procedural capabilities of the court for the consideration and resolution of judicial control proceedings and to determine its optimal competence.

Objectives and tasks of the study

The purpose of this study is to systematically define the competence of the court in exercising judicial control at the pre-litigation stages of the criminal procedure, to develop recommendations aimed at improving current legislation and unifying judicial practice.

To achieve this goal, the following tasks were set and solved:

- to study the history of the formation of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure in domestic criminal procedural law;

- to determine the place of judicial control at the pre-litigation stages of the criminal procedure in the system of functions of the judiciary and to correlate it with the activities of the court in the administration of justice;

- formulate a definition of the court’s competence;

- determine the structure of the court’s competence, its limits and the prerequisites for its formation;

- determine the mechanism for implementing the court’s competence and establish its elements;

[8] Lines 27-33, 36-46, 50-51, 58-61 of Section 4 of the Report on the Work of Courts of General Jurisdiction in Considering Criminal Cases at First Instance for 2023 // Official website of the Judicial Department under the Supreme Court of the Russian Federation. URL: http://cdep.ru/index.php?id=79&item=7645 (date accessed: 31.01.2025).

- to correlate the competence of the court in exercising judicial control at the pre-litigation stages of the criminal procedure with the exclusive competence of the court resolving the criminal case on the merits;

- determine the essence of the court's competence to establish circumstances that fall within the subject of judicial control, and identify the powers that comprise it;

- to determine the powers within the court's competence to make procedural decisions and to propose a classification of their types and grounds for adoption;

- to propose a model of the procedure for judicial control proceedings, consisting of a system of procedural actions of the court, ensuring effective protection of the constitutional rights and freedoms of participants in criminal proceedings.

Methodological and theoretical basis of the research

To achieve the goal and solve the research problems, to ensure the reliability of the conclusions, such general scientific, as well as specific scientific and special legal research methods as formal- logical, analysis and synthesis, systems analysis, statistical, sociological, historical-legal, formal-legal and others were used.

The theoretical basis of the study was made up of scientific works in the field of general theory of law, scientific ideas contained in monographs, dissertations and other works devoted to criminal procedural law and related to the subject of the study.

Regulatory framework for the study

The normative basis of the study is the Constitution of the Russian Federation, federal constitutional laws and federal laws, as well as pre-revolutionary, Soviet and modern criminal procedural legislation.

Empirical basis of the study

The empirical basis of the study is the results of summarizing published and unpublished judicial practice for the period from 2021 to 2024 for three types of judicial control: consideration of petitions of officials to choose a preventive measure for a suspect/accused in the form of detention in accordance with Article 108 of the Criminal Procedure Code of the Russian Federation; consideration of complaints against actions (inaction) and decisions of officials authorized to carry out criminal prosecution, in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation;

verification of the legality of a search carried out in urgent cases, in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation.

The author analyzed 500 judicial acts (166/167 acts for each of the named types of judicial control) adopted by district courts of Moscow, Moscow Region, St. Petersburg, Astrakhan Region, the Republic of Dagestan, Kamchatka Krai, Krasnoyarsk Krai, Orenburg Region, Rostov Region, Stavropol Krai, Tula Region, Udmurt Republic, Khanty-Mansi Autonomous Okrug, as well as courts of federal subjects in cases where the corresponding decisions of the lower court were overturned.

When studying the practice of considering petitions of officials in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, emphasis was placed on subsequent judicial control, within the framework of which the procedural capabilities of the court, which constitute the content of its competence, are manifested to a greater extent.

The results of the generalization of judicial practice are presented in tables, which are an appendix to this study.

The work uses individual decisions of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, and courts of general jurisdiction. The author's personal experience in advocacy was also used in the study.

The second part of the empirical base of the study consists of the results of a survey of practitioners conducted from October 2023 to March 2024 on the implementation of judicial control and the exercise by the court of its supervisory powers.

A total of 305 practitioners were surveyed: advocates, prosecutors, investigators, judges.

The results of the survey are presented in tables, which are an appendix to this study.

Theoretical and practical significance of the study

The theoretical significance of the study is expressed in the comprehensive, systemic approach to determining the competence of the court in exercising judicial control at the pre-litigation stages of the criminal procedure from the point of view of the groups of powers that form it, in identifying the structure, limits, prerequisites for the

formation and mechanism for implementing this competence, its relationship with the exclusive competence of the court considering the criminal case on the merits. The theoretical significance of the study is also manifested in the proposed classification of types and grounds for making procedural decisions by the court, as well as the model of the procedure for judicial control proceedings, designed to ensure effective protection of the constitutional rights and freedoms of participants in criminal proceedings.

The theoretical developments proposed in the study can contribute to the improvement of judicial control both as an institution of criminal procedural law and as an independent function of the judiciary.

The practical significance of the study lies in the possibility of using its results in legislative activity, in the formation of a unified law enforcement practice, as well as in the educational process in higher educational institutions and in the system of advanced training for employees of the court, prosecutor's office, investigative bodies, and the bar.

The reliability of the research results is ensured by the use of appropriate methodology, a sufficient volume of scientific and regulatory sources, as well as an empirical basis for the research.

Testing the research results

The results of the dissertation research were presented at international conferences of the Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University in 2020-2022, at the XI International Youth Legal Forum (May 17-18, 2021), at the All-Russian scientific and practical conference "The Prosecutor's Office in Russia: 300 Years of Protecting Rights and Freedoms" (March 25, 2022), at the All-Russian Conference on Natural Sciences and Humanities with International Participation "Science SPbSU - 2023" (November 21, 2023).

The results of the dissertation research were reflected in 8 articles, 4 of which were published in publications recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation.

List of works published on the topic of dissertation research

In journals included in the list of the Higher Attestation Commission:

1) Lukianov S.S. On the issue of judicial protection of the rights of the parties when they present evidence at the stage of preliminary investigation / S. S. Lukianov // Theory and practice of social development. 2021. No. 4 (158). P. 48-51.

2) Lukianov S.S. On the issue of determining the competence of the court to ensure the proper procedure of judicial control at the pre-trial stages of the criminal trial / S. S. Lukianov // Bulletin of the Siberian Law Institute of the Ministry of Internal Affairs of Russia. 2023. No. 4 (53). P.63-70.

3) Lukianov S.S. Determining the court's competence to participate in the process of proof while implementing judicial control at pre-trial stages of criminal proceedings / S. S. Lukianov // Russian judge. 2024. No. 2. P.34-39.

4) Lukianov S.S. Challenging issues of determination of court jurisdiction over adoption of procedural decisions in exercising judicial control at pre-trial criminal procedure stages / S. S. Lukianov // Russian investigator. 2024. No. 5. P.17-22.

In other publications:

5) Lukianov S.S. Problems of evidence evaluation in the exercise of judicial control at the preliminary investigation stage / S. S. Lukianov // Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University: Conference Proceedings 2020-2021 / edited by N.P. Kirillova, S.P. Kushnirenko, N.G. Stoyko, V.Yu. Nizamov. M.: Rusains, 2021. Pp. 161-165.

6) Lukianov S.S. Some issues of the competence of the court in exercising judicial control over the extension of the term of the preventive measure in the form of detention / S. S. Lukianov // Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University: Proceedings of the XIII International Conference, June 24-25, 2021 / edited by N.P. Kirillova, V.D. Pristanskov, N.G. Stoyko, V.Yu. Nizamov. M.: Rusains, 2022. Part 2. Pp. 101-106.

7) Lukianov S.S. Judicial control at the pre-litigation stages of the criminal procedure and justice / S. S. Lukianov // Scientific school of criminal procedure and forensic science of St. Petersburg State University "Criminal Procedure Code of the

Russian Federation: 20 years later": Proceedings of the XIV International scientific and practical conference, June 24-25, 2022 / ed. N.G. Stoyko, V.Yu. Nizamov. Moscow: Rusains, 2022. Pp.333-340.

8) Lukianov S.S. The competence of the court in exercising judicial control / S. S. Lukianov // Science of St. Petersburg State University - 2023: Collection of materials of the All-Russian conference on natural and humanitarian sciences with international participation, November 21, 2023 / ed. V.G. Bykov, A.V. Tsurkan. St. Petersburg: St. Petersburg State University, 2024. Pp. 908-909.

Structure of the dissertation

The work consists of an introduction, three chapters consisting of 10 paragraphs, a conclusion, a list of references, 10 appendices reflecting the results of a survey of practitioners and a summary of judicial practice.

The scientific novelty of the study lies in the fact that for the first time at the monographic level, based on a comprehensive analysis of modern legislation and law enforcement practice, a comprehensive study of the competence of the court in the implementation of judicial control at the pre-litigation stages of the criminal procedure was conducted, which includes the definition of the concept of competence, its structure, limits and mechanism of implementation. The relationship of this competence with the exclusive competence of the court considering the criminal case on the merits was determined, which made it possible to establish the necessary scope of the court's powers for the effective consideration and resolution of judicial control proceedings, including powers to participate in the process of proof and to make procedural decisions, as well as to determine the optimal mechanism for their effective implementation. The main scientific results of the study and the provisions submitted for defense are novel.

Main scientific results

1. The structure of the court’s competence in exercising judicial control at the pre-litigation stages of the criminal procedure is revealed (No. 118 in the list of references, pp. 34-39; No. 119 in the list of references, pp. 17-22).

2. The concept of the limits of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure is defined, and the prerequisites for its formation are identified (No. 114, p. 68; No. 118, pp. 34-39; No. 119, pp. 17-22).

3. It has been established that, with regard to various types of judicial control, the court has a general, uniform competence, the scope and limits of which are determined by its relationship with the exclusive competence of the court resolving the criminal case on the merits. Distinctive features of the competence of the court in exercising judicial control at the pre-litigation stages of the criminal procedure are revealed in comparison with the competence of the court resolving the criminal case on the merits (No. 115, p. 50; No. 114, pp. 64-69; No. 118, p. 35; No. 119, pp. 21-22).

4. It has been proven that the establishment of circumstances included in the subject of judicial control is carried out by the court by means of criminal procedural proof in accordance with the general provisions on evidence and proving contained in Chapters 10 and 11 of the Criminal Procedure Code of the Russian Federation, while the court is authorized to carry out any investigative and other procedural actions provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation (No. 115, pp. 49-50; No. 114, pp. 64-66; No. 118, p. 35).

5. Factors limiting the scope of the court's competence to participate in the process of proof at the pre-litigation stages of the criminal procedure have been identified (No. 114, pp. 67, 69; No. 118, pp. 35-39).

6. The author proposes a classification of types and grounds for making judicial decisions in the implementation of judicial control at the pre-litigation stages of the criminal procedure (No. 119, pp. 17-22).

7. The author presents a unified model of the procedure of judicial control proceedings, which includes successive stages consisting of a system of procedural actions of the court. The internal structure and content of these stages are proposed (No. 114, pp. 64-69).

8. It has been established that the general conditions of judicial proceedings apply to judicial control proceedings, while acting with the necessary restrictions due to the

specifics of the goals, objectives and subject of judicial control activities (No. 114, pp. 66, 68; No. 118, pp. 36-39).

Provisions submitted for defense

1. The author presents a definition the competence of the court in exercising judicial control at the pre-litigation stages of the criminal procedure. This competence represents a set of powers of the court to consider judicial control proceedings by establishing, by criminal procedural means, the circumstances included in the subject of judicial control, and making procedural decisions during and based on the results of these proceedings.

2. The structure of the court's competence in exercising judicial control has been determined, which includes the following elements: 1) the court's powers to participate in the process of proof, including the powers to carry out investigative and other procedural actions; 2) the court's powers to make procedural decisions.

3. The limits of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure are the totality of the court's powers sufficient to establish the circumstances included in the subject of judicial control and to consider the filed complaint or filed petition.

4. The prerequisites for the formation of the court's competence in the implementation of judicial control at the pre-litigation stages of the criminal procedure are identified, which are the goals and objectives of judicial control activities, as well as the features of its subject.

5. The author's approach to the mechanism for implementing the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure has been formulated. This mechanism is a system of procedural actions of the court consisting of successive stages for the application of criminal procedural rules that establish the content and scope of its competence to exercise judicial control at the pre-litigation stages of the criminal procedure.

The mechanism for implementing the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure consists of the following elements: 1) the norms of criminal procedural law that establish the content and scope of

the court's competence; 2) a system of procedural actions of the court (procedure) consisting of successive stages, in which these norms are implemented.

6. With regard to various types of judicial control, the court has a general, unified competence. The scope and limits of this competence are determined by its relationship with the exclusive competence of the court resolving the criminal case on the merits.

The distinctive features of the court's competence in exercising judicial control are:

- the specifics of the subject of judicial control;

- features of the goals and objectives of the procedural function carried out by the court;

- the level (degree) of proof of the circumstances included in the subject of judicial control;

- types of decisions taken and their prejudicial nature;

- features of the mechanism for implementing competence.

7. The author's system of argumentation of the essence of the cognitive activity of the court in the implementation of judicial control is presented.

The means of proof used by the court for the circumstances included in the subject of judicial control are the same for the consideration of judicial control proceedings and for the consideration of a criminal case on the merits.

The establishment of circumstances included in the subject of judicial control is carried out by means of criminal procedural proof in accordance with the general provisions on evidence and proving contained in Chapters 10 and 11 of the Criminal Procedure Code of the Russian Federation, while the court is authorized to carry out any investigative and other procedural actions provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation. At the same time, the limits of the court's competence to participate in the process of proof are limited by the preliminary nature of the decisions taken, due to the existence of various levels (degrees) of proof during the succession of stages of criminal proceedings, the rule on the secrecy of the preliminary investigation, and the volume of materials submitted to the court.

The author has formulated a model of the use of materials of judicial control proceedings by an official of the preliminary investigation body in the process of proving the main criminal case.

8. The author presents a classification of procedural decisions taken by the court in exercising judicial control, including types of final and interim decisions, and the grounds for their adoption.

The conclusion is substantiated that decisions taken based on the results of judicial control activities do not have a prejudicial effect for the court resolving the criminal case on the merits.

9. The unity of the court's competence in exercising judicial control also determines the unity of the mechanism for its implementation.

The author has formulated a unified model of the procedure of judicial control proceedings, which includes successive stages consisting of a system of procedural actions of the court. The internal structure and content of these stages are substantiated.

It is concluded that the general conditions of judicial proceedings apply to judicial control proceedings, while acting with the necessary restrictions due to the specifics of the goals, objectives and subject of judicial control activities.

Chapter 1. Historical aspect of development of the competence of the court in the course of the pre-litigation proceedings in Russia

§1. History of the formation of the court's competence in exercising judicial control during pre-litigation proceedings in the Russian Empire

In scientific literature, periodization of the main stages of formation and development of the institute of judicial control has been repeatedly proposed. Among the latest dissertation studies, the author's periodization was proposed by R.R. Umyarova: stages from 1711 to 1864, from 1864 to 1917, from 1917 to 1991, the modern period[9].

Remaining within the framework of the proposed periodization, it should be noted that judicial review as a separate area of judicial activity in pre-trial proceedings was practically not regulated before the reform of 1864. I. Ya. Foinitsky, describing this period in the history of domestic law, noted: "... complete arbitrariness of the police reigned, which was the body not only of inquiry, but also of preliminary investigation <...> each authority could take a person into custody; it was not determined whether such a police decision was subject to appeal, revision or not"[10].

The rare legal norms regulating judicial review were contained in scattered, unsystematized acts. In particular, Article 401 of the Institutions for Governing the Provinces, adopted in 1775 by Catherine II, provided for the right of the accused to file a complaint with the court regarding the illegality of his detention in prison[11]. The Code of Laws of the Russian Empire of 1832[12] did not at all know judicial review in its classical sense.

In 1845, the Code of Criminal and Correctional Punishments was adopted[13], Articles 459-461 of which provided for the right of the court to impose penalties on officials during an investigation (from a reprimand to expulsion from service) for red tape

[9] Umyarova R.R. Judicial control over the legality and validity of investigative actions in criminal proceedings in Russia: law, doctrine and practice: diss. ... candidate of legal sciences. Nizhny Novgorod, 2024. P.10, 40.
[10] Foinitsky I.Y. Course of criminal proceedings. St. Petersburg, 1996. Vol.2. P.323.
[11] Institutions for the management of provinces in 1775 // RLS "Garant".
[12] Code of Laws of the Russian Empire of 1832 // RLS "Garant".
[13] Code of Criminal and Correctional Punishments of 1845 // Federal State Information System "National Electronic Library". URL: https://rusneb.ru/catalog/000199_000009_002889696 (date of access: 31.01.2025).

committed during the investigation, for failure to inform a detainee of the reasons for his detention and failure to interrogate him within 3 days after his placement in custody, or for other violations of the procedure for conducting an investigation.

The absence of an independent court at this stage of the history of domestic law negated the effectiveness of such forms of judicial activity. Criminal procedure as a whole required fundamental changes.

The beginnings of the institution of judicial control over the actions and decisions of the investigative authorities appeared in 1860, when the Order for judicial investigators was adopted, which required that the investigator's decision to detain a suspect be submitted to the court for review[14].

Judicial review as an institution of criminal procedural law was formed only with the adoption of the Charter of Criminal Procedure (hereinafter also referred to as the CCP) in 1864[15]. Chapter 12 of the CCP was devoted to the legal regulation of this institution, Article 491 of which contained a provision stating that persons participating in a case may lodge complaints against any investigative action that violates or restricts their rights. A complaint could be filed by any participant in criminal proceedings, including a witness or another person who is not on either side of the criminal process.

Thus, since the introduction of the UUS in 1866, the competence of the court in the exercise of judicial review has become absolute in terms of the absence of restrictions on the range of actions and decisions of the investigator, the legality and validity of which could be verified by the court. This provision differs significantly from the corresponding norm of Part 1 of Article 125 of the current Criminal Procedure Code of the Russian Federation[16], according to which the range of decisions and actions of the investigator[17] included in the subject of judicial review is limited.

The Charter of Criminal Procedure also regulated the time period for consideration of a complaint by the court: the court begins to resolve it in a dispositive court session on

[14] Judicial review in criminal proceedings: a textbook / edited by N.A. Kolokolov. 2nd ed. Moscow, 2013. P.30.
[15] The Charter of Criminal Procedure of 1864 // RLS "Garant".
[16] Criminal Procedure Code of the Russian Federation of 18.12.2001 No. 174-FZ // Rossiyskaya Gazeta. 2001. No. 249.
[17] For the sake of convenience, in the text below, we will also understand the investigator as the interrogating officer, except in cases where the difference in the procedural status of these participants in criminal proceedings will be significant for the purposes of this study.

the “first present day” from the date of its receipt (Article 501). For comparison: according to the current Criminal Procedure Code of the Russian Federation, the court considers a complaint, as a general rule, within 14 days from the date of its receipt (Part 3 of Article 125 of the Criminal Procedure Code of the Russian Federation).

The person who filed the complaint was granted the right to personally participate in the court hearing on its consideration, as well as the right to give explanations to the court (Article 504 of the Criminal Code). The limits of the court's competence to consider the complaint received were quite broad. In particular, the court was granted the right to invalidate the contested investigative actions, indicating the need to conduct them again, the right to transfer the case to another investigator for preliminary investigation (Article 507 of the Criminal Code).

Comparing this provision with the current criminal procedure legislation, it should be noted that the limits of competence of a modern Russian court to consider complaints at pre-trial stages of the process are much narrower. Thus, if the applicant's complaint is satisfied, the court has the authority to recognize the corresponding action or decision of the investigator as illegal or unfounded and oblige the latter to eliminate the violation committed (Part 5 of Article 125 of the Criminal Procedure Code of the Russian Federation). At the same time, the court does not have the right to give the investigator specific instructions on how the violation committed is to be eliminated[18].

In addition to considering complaints against the actions and decisions of the investigative authorities, the Criminal Procedure Code also knew of other forms of judicial review. Thus, Article 268 of the Criminal Procedure Code included the exclusive competence of the court to seize the property of the accused in order to secure a civil claim.

According to Article 277 of the Criminal Procedure Code, only the court could decide to terminate the preliminary investigation, which is fundamentally different from the modern criminal procedure law, according to which the investigator is independent in

[18] Clause 21 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 “On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

deciding whether to terminate criminal prosecution (Article 212 of the Criminal Procedure Code of the Russian Federation). However, since 2018, when Article 214.1 of the Criminal Procedure Code of the Russian Federation was put into effect (the judicial procedure for obtaining permission to cancel a decision to terminate criminal prosecution after 1 year from the date of its issuance)[19], the court acquired a number of supervisory powers over the termination and resumption of criminal prosecution, which, in terms of competence, brought it closer to the post-reform (pre-revolutionary) court.

Despite the fairly broad competence of the court to consider the above issues, the placement of the accused in custody continued to be within the exclusive competence of the investigator (Article 283 of the Criminal Code). Judicial control was only available in relation to the dispute between the investigator and the prosecutor regarding the need to place the accused in custody (Article 285 of the Criminal Code). In addition, the accused retained the right to appeal to the court the investigator's decision to place him in custody in accordance with Chapter 12 of the Criminal Code.

In the scientific literature it is noted that despite the declaratively broad subject of judicial review, it was limited by the mandatory acts of the Senate, and the judicial review itself was “akin to departmental review, not characteristic of the judicial power, which inevitably reduced its effectiveness” [20].

Despite this circumstance, the post-reform institution of judicial review bore clear signs of an adversarial model of criminal procedural regulation, which significantly distinguished it from the model of Soviet criminal procedure that replaced it, which had investigative features.

[19] Federal Law of 12.11.2018 No. 411-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".

[20] Solodilov A.V. Judicial control over the conduct of investigative actions and decisions of the prosecutor and investigative bodies restricting the constitutional rights and freedoms of citizens in criminal proceedings in Russia: diss. ... candidate of legal sciences. Tomsk, 1999. P.228.

§2. Development of the court's competence in exercising judicial control during pre-litigation proceedings in the Soviet and post-Soviet periods

On November 24, 1917, the Council of People's Commissars of the RSFSR adopted Decree No. 1 "On the Court", which abolished all existing judicial institutions. The conduct of both preliminary investigation and trial was transferred to local judges, who were to be guided by previously effective laws only to the extent that they had not been abolished by the revolution and did not contradict the revolutionary conscience and revolutionary legal consciousness (paragraph 5)[21].

The abolition of the previously existing judicial institutions meant the abolition of judicial control at the stage of preliminary investigation as such. By the Resolution of the People's Commissariat of Justice of the RSFSR of 15.12.1917 "On measures of detention of detainees and on the establishment of investigative commissions at prisons to verify the correctness and legality of arrest" [22], powers to verify the legality of the arrest of accused persons in the territory of Petrograd were granted not to the courts, but to temporary investigative commissions operating at prisons.

By the Instruction of the People's Commissariat of Justice of the RSFSR of 19.12.1917 "On the revolutionary tribunal, its composition, cases subject to its jurisdiction, the punishments it imposes and the procedure for conducting its sessions" [23] the powers of the court to consider criminal cases on crimes against revolutionary legality were transferred to revolutionary tribunals, operating in the composition of three permanent members, a secretary and assessors. Subsequently, the Decree of the All-Russian Central Executive Committee of the RSFSR of 12.04.1919 "On revolutionary tribunals (regulations)" was adopted[24].

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[21] Decree of the Council of People's Commissars of the RSFSR of 24.11.1917 No. 1 "On the Court" // RLS "Consultant Plus".
[22] Resolution of the People's Commissariat of Justice of the RSFSR of 15.12.1917 "On measures of detention of detainees and on the establishment of investigative commissions in prisons to verify the correctness and legality of arrest" // RLS "Consultant Plus".
[23] Instruction of the People's Commissariat of Justice of the RSFSR of 19.12.1917 "On the revolutionary tribunal, its composition, cases subject to its jurisdiction, the punishments it imposes, and the procedure for conducting its meetings " // RLS "Consultant Plus".
[24] Decree of the All-Russian Central Executive Committee of the RSFSR of 12.04.1919 “On revolutionary tribunals (regulations)” // RLS “Consultant Plus”.

The first elements of the re-established, albeit partially, institution of judicial review are reflected in the Decree of the All-Russian Central Executive Committee of the RSFSR of 30.11.1918 "On the People's Court of the RSFSR" [25]. In particular, as in pre-revolutionary legislation, only the people's judge was vested with the authority to decide on the termination of a criminal case at the stage of preliminary investigation (Article 36). The people's judge checked the legality of the detention of the accused and could release them from custody by his decision (Article 6). It was envisaged that decisions of the investigative authority could be appealed to the people's court within 2 weeks from the date of their issuance (Article 38).

The mentioned elements of judicial control in a more specific form were included in the "Regulations on the People's Court of the RSFSR", approved by the Decree of the All-Russian Central Executive Committee of the RSFSR dated 10/21/1920[26].

Legal norms regulating issues of judicial review were consolidated into a single act only with the adoption of the Criminal Procedure Code of the RSFSR of 1922[27], and then the Criminal Procedure Code of the RSFSR of 1923[28].

Article 6 of the Criminal Procedure Code of the RSFSR of 1923 stated that every judge who discovers within his precinct or district that someone is being held in custody without a lawful order or for more than a certain period of time is obliged to immediately release the person who was wrongly deprived of liberty. A similar provision was contained in Article 104 of the Criminal Procedure Code of the RSFSR, according to which the investigative body that detained the suspect was obliged to notify the court within 24 hours, which within 48 hours had to "either confirm the arrest or cancel it".

At the same time, if the preventive measure was chosen by the investigator, then there was no judicial control over this procedural action (Articles 143, 144, 158 of the Criminal Procedure Code of the RSFSR of 1923), but prosecutorial supervision was

[25] Decree of the All-Russian Central Executive Committee of the RSFSR of 30.11.1918 "On the People's Court of the RSFSR" // RLS "Consultant Plus".
[26] Decree of the All-Russian Central Executive Committee of the RSFSR of 10/21/1920 "On the People's Court of the RSFSR" // RLS "Consultant Plus".
[27] Criminal Procedure Code of the RSFSR of 1922: Resolution of the All-Russian Central Executive Committee of the RSFSR of 25.05.1922 // RLS "Consultant Plus".
[28] Criminal Procedure Code of the RSFSR of 1923: Resolution of the All-Russian Central Executive Committee of the RSFSR of 15.02.1923 // RLS "Consultant Plus".

retained (Article 146). In this case, the court acted to a certain extent as an arbitrator in resolving the dispute between the investigator and the prosecutor on the legality of the choice of the preventive measure (Article 148), which is reminiscent of the corresponding provision of Article 285 of the Criminal Procedure Code.

Other forms of judicial review traditional for modern criminal proceedings also remained within the competence of the prosecutor. In particular, the seizure of postal correspondence was carried out by the investigator with the permission of the prosecutor (Article 186 of the Criminal Procedure Code of the RSFSR).

On the other hand, the Criminal Procedure Code of the RSFSR of 1923 also included forms of judicial review that the modern criminal procedure law attributes exclusively to departmental review. Thus, according to Article 122 of the Criminal Procedure Code of the RSFSR, a challenge filed against an investigator was considered by a people's court. The current Criminal Procedure Code of the Russian Federation grants such authority only to the head of the investigative body (Article 39 of the Criminal Procedure Code of the Russian Federation).

The Criminal Procedure Code of the RSFSR of 1923 completely eliminated direct judicial review in the form of reviewing complaints about the actions and decisions of the investigator. According to Article 212 of the Criminal Procedure Code of the RSFSR, a complaint could be filed with the prosecutor. Only the prosecutor's decision made on the complaint could be appealed to the court (Article 220).

Subsequently, with the adoption of the Fundamentals of Criminal Procedure of the USSR and the Union Republics of 1924[29], the Fundamentals of Criminal Procedure of the USSR and the Union Republics of 1958[30] and, accordingly, the Criminal Procedure Code of the RSFSR of 1960[31], the role of the court in the mechanism for monitoring the legality of the actions and decisions of preliminary investigation bodies was further weakened and almost completely excluded.

[29] Fundamentals of criminal proceedings of the USSR and the union republics of 1924: Resolution of the Presidium of the Central Executive Committee of the USSR of 10/31/1924 // RLS "Consultant Plus".
[30] Fundamentals of criminal proceedings of the USSR and the union republics of 1958: Law of the USSR of 25.12.1958 // RLS "Consultant Plus".
[31] Criminal Procedure Code of the RSFSR of 1960: Law of the RSFSR of 10/27/1960 // RLS "Consultant Plus".

The court ceased to participate in those forms of verification of the legality of the application of preventive measures at pre-trial stages of criminal proceedings that were retained by it under the Criminal Procedure Code of the RSFSR of 1923. Thus, at the stage of preliminary investigation, the decision to place a person in custody was made exclusively with the sanction of the prosecutor (Articles 89, 211 of the Criminal Procedure Code of the RSFSR of 1960). The same applied to the conduct of a search (Article 168 of the Criminal Procedure Code of the RSFSR), the seizure of postal and telegraph correspondence (Article 174 of the Criminal Procedure Code of the RSFSR).

The investigator's competence included making a decision to remove the accused from office, which was subject to approval by the prosecutor (Article 153 of the Criminal Procedure Code of the RSFSR), as well as the seizure of the accused's property (Article 175 of the Criminal Procedure Code of the RSFSR).

Chapter 19 of the Criminal Procedure Code of the RSFSR of 1960 ("Appealing the actions of the inquiry body, investigator and prosecutor") did not provide for the possibility of appealing the actions of preliminary investigation bodies to the court. Such actions could be appealed exclusively to the prosecutor (Article 218 of the Criminal Procedure Code of the RSFSR), whose decisions and actions could be appealed to a higher prosecutor (Article 220 of the Criminal Procedure Code of the RSFSR).

Based on the above, it can be concluded that at the stage of the history of domestic criminal proceedings under consideration, judicial review during pre-trial proceedings in a criminal case was practically absent. The court verified the legality and validity of the actions and decisions of the preliminary investigation bodies only when considering the criminal case on its merits.

According to N.A. Kolokolov, the Soviet criminal procedure doctrine proceeded from the fact that departmental control and prosecutorial supervision, carried out in a continuous mode, are sufficient to ensure the proper level of legality at the stage of

preliminary investigation[32]. At the same time, as some modern researchers note, the system of prosecutorial supervision that had developed by the 1980s was quite effective[33].

The current stage of development of the institute of judicial review dates back to October 24, 1991, when the Supreme Council of the RSFSR adopted the resolution "On the Concept of Judicial Reform in the RSFSR" [34]. The key issue for the issues considered in this paper was paragraph 3 of this resolution, which provided for the expansion of opportunities for appealing to the court against illegal actions of officials, the establishment of judicial review of the legality of the application of preventive measures and other measures of procedural coercion as one of the areas of judicial reform.

The Constitution of the Russian Federation, adopted by popular vote on December 12, 1993, established mandatory judicial control over detention and the extension of its term (Article 22), restrictions on the privacy of correspondence, telephone conversations, postal, telegraphic and other communications (Article 23), and proclaimed the right to appeal to the court decisions, actions (inaction) of government bodies and officials (Article 46).

In development of the concept of judicial reform, the Decree of the President of the Russian Federation of 22.11.1994 No. 2100 "On measures to implement the Concept of judicial reform in the Russian Federation " was adopted[35], and the reform itself was embodied in the gradual change of the Criminal Procedure Code of the RSFSR of 1960, which was in effect until 2002, when on July 1 the Criminal Procedure Code of the Russian Federation, adopted on December 18, 2001, came into force[36].

The Criminal Procedure Code of the Russian Federation has established and regulated three main forms (types) of judicial review at pre-trial stages of criminal proceedings:

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[32] Kolokolov N.A. Methodology for conducting the main judicial control actions at the stage of preliminary investigation. 2nd ed., revised and enlarged. Moscow, 2015. Part 1. P. 63.
[33] See, for example: Maksurov A.A. Judicial review at the pre-trial stage of criminal proceedings. Moscow, 2023. P.35.
[34] Resolution of the Supreme Council of the RSFSR of 24.10.1991 No. 1801-1 “On the Concept of Judicial Reform in the RSFSR” // RLS “Consultant Plus”.
[35] Decree of the President of the Russian Federation of 22.11.1994 No. 2100 "On measures to implement the Concept of judicial reform in the Russian Federation" // RLS "Consultant Plus".
[36] Criminal Procedure Code of the Russian Federation of 18.12.2001 No. 174-FZ // Rossiyskaya Gazeta. 2001. No. 249.

1) selection of preventive measures in the form of detention, house arrest and bail (Articles 106, 107, 108 of the Criminal Procedure Code of the Russian Federation);

2) consideration of the issue of granting permission to carry out investigative actions that restrict the constitutional rights of citizens, and subsequent verification of the legality of their implementation in cases that do not tolerate delay (Article 165 of the Criminal Procedure Code of the Russian Federation);

3) consideration of complaints against actions (inaction) and decisions of preliminary investigation bodies and the prosecutor (Article 125 of the Criminal Procedure Code of the Russian Federation).

The application of criminal procedural coercion measures in the form of temporary suspension from office (Article 114 of the Criminal Procedure Code of the Russian Federation) and seizure of property (Article 115 of the Criminal Procedure Code of the Russian Federation) also became possible only by a court decision.

However, the reform of the institution of judicial review did not end there.

On June 5, 2007, Federal Law No. 87-FZ amended the legal regulation of bail as a preventive measure[37]. If during the first 5 years of the RF Criminal Procedure Code bail could be chosen by the prosecutor, as well as the investigator and inquiry officer with the prosecutor's consent, then since 2007 the choice of this preventive measure has been assigned to the exclusive competence of the court.

On October 21, 2014, the Constitutional Court of the Russian Federation adopted Resolution No. 25-P, which recognized a number of provisions of Article 115 of the Criminal Procedure Code of the Russian Federation, regulating the procedure for applying such a measure of procedural coercion as seizure of property, as inconsistent with the Constitution of the Russian Federation, in terms of the lack of guarantees for persons who are not suspects and defendants in a criminal case, from the excessively long effect of the said coercive measure[38]. The Constitutional Court of the Russian Federation

[37] Federal Law of 05.06.2007 No. 87-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation and the Federal Law "On the Prosecutor's Office of the Russian Federation" // RLS Consultant Plus.

[38] Resolution of the Constitutional Court of the Russian Federation of 21.10.2014 No. 25-P "On the case of verifying the constitutionality of the provisions of parts three and nine of Article 115 of the Criminal Procedure Code of the Russian Federation in connection with the complaints of the limited liability company "Aurora low-rise construction" and citizens V.A. Shevchenko and M.P. Eidlen" // RLS "Consultant plus".

indicated that the period of seizure of property must meet the criterion of reasonableness and in any case not exceed the statutory time limits for preliminary investigation.

In pursuance of the above ruling of the Constitutional Court of the Russian Federation, in 2015, the federal legislator introduced amendments to Part 3 of Article 115 of the Criminal Procedure Code of the Russian Federation, which specified the competence of the court in the implementation of such a type of judicial control as the seizure of property. In particular, the court's obligation to indicate the period for which the seizure of property of persons who are not suspects or defendants in a criminal case is imposed was established. The procedure for extending the period for the seizure of property was established in Article 115.1 of the Criminal Procedure Code of the Russian Federation[39].

Federal Law No. 36-FZ of 08.03.2015 "On Amendments to the Criminal Procedure Code of the Russian Federation"[40] put into effect Article 125.1 of the Criminal Procedure Code of the Russian Federation, which regulated the specifics of considering certain categories of complaints. In particular, this article established that when considering a complaint against a decision to terminate a criminal case or criminal prosecution on the grounds of eliminating the criminality and punishability of the act by a new criminal law, failure to reach the age of criminal responsibility, or in connection with the personal age characteristics of a minor, the court carries out a full-fledged trial in accordance with the rules of Chapter 37 of the Criminal Procedure Code of the Russian Federation with an examination of the factual circumstances of the case and verification of the validity of the procedural decisions made during its investigation.

The amendments made on 24.05.2016 to the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation"[41] removed from the subject of judicial review

[39] Federal Law of 29.06.2015 No. 190-FZ "On Amendments to Certain Legislative Acts of the Russian Federation" // RLS "Consultant Plus".
[40] Federal Law of 08.03.2015 No. 36-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".
[41] Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 “On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation a whole range of decisions of the investigative authority: on refusing a party to collect and verify evidence, on refusing to appoint an expert examination, on bringing a person as an accused, etc. [42]

By Federal Law No. 72-FZ of 18.04.2018, the Criminal Procedure Code of the Russian Federation was supplemented by Article 105.1 of the Criminal Procedure Code of the Russian Federation, which contained a new preventive measure - a ban on certain actions[43]. The selection and extension of the term of this preventive measure was also attributed to the exclusive competence of the court.

In 2018, a new type of judicial review appeared in the Russian criminal procedure, which concerns the termination of a criminal case and criminal prosecution. It consists of the court considering the issue of allowing the cancellation of a decision to terminate a criminal prosecution or a criminal case after 1 year from the date of its issuance (Article 214.1 of the Criminal Procedure Code of the Russian Federation, introduced by Federal Law No. 411-FZ of 12.11.2018[44]). This power of the court is similar to judicial review of the termination of a preliminary investigation under the Charter of Criminal Procedure of 1864 (Article 277) and the Decree of the All-Russian Central Executive Committee "On the People's Court of the RSFSR" of 1918 (Article 36).

In 2022, the court's competence in considering complaints under Article 125 of the Criminal Procedure Code of the Russian Federation was expanded. Thus, by Federal Law No. 181-FZ of 11.06.2022 "On Amendments to the Criminal Procedure Code of the Russian Federation" [45], adopted in order to implement the Resolution of the Constitutional Court of the Russian Federation of 13.05.2021 No. 18-P[46], Article 125.1

[42] Resolution of the Plenum of the Supreme Court of the Russian Federation of 24.05.2016 No. 23 "On Amendments to Certain Resolutions of the Plenum of the Supreme Court of the Russian Federation on Criminal Cases" // RLS "Consultant Plus".
[43] Federal Law of 18.04.2018 No. 72-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation in Terms of Selecting and Applying Preventive Measures in the Form of a Prohibition of Certain Actions, Bail, and House Arrest" // RLS "Consultant Plus".
[44] Federal Law of 12.11.2018 No. 411-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".
[45] Federal Law of 11.06.2022 No. 181-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".
[46] Resolution of the Constitutional Court of the Russian Federation of 13.05.2021 No. 18-P "On the case of verifying the constitutionality of part three of Article 131 and Article 132 of the Criminal Procedure Code of the Russian Federation, as well as paragraph 30 of the Regulation on reimbursement of procedural costs associated with criminal proceedings, costs in

of the Criminal Procedure Code of the Russian Federation was supplemented with provisions that when considering complaints against decisions of officials of preliminary investigation bodies on the payment of monetary amounts to the victim to cover expenses related to the payment of remuneration to his representative, the court checks not only the legality and validity of the relevant decision, but also the necessity and justification of the expenses incurred by the victim, independently determining their amount.

Thus, an exception was made from the general provision of Part 5 of Article 125 of the Criminal Procedure Code of the Russian Federation, according to which the court can only recognize the relevant decision of an official as illegal or unfounded, without indicating a way to eliminate the violation.

On June 28, 2022, amendments were made to the Resolution of the Plenum of the Supreme Court of the Russian Federation "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation" dated February 10, 2009 No. 1, which expanded the competence of the court when considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation[47]. In particular, the Supreme Court of the Russian Federation indicated the possibility of appealing a decision to initiate a criminal case issued on the fact of committing a crime, which was not previously allowed, noting that when considering such a complaint, the court must also check the legality and validity of the procedural actions and operational-search measures taken during the verification of the report of a crime, based on the results of which the official concluded that there is sufficient data indicating signs of a specific crime (clause 16). The Supreme Court of the Russian Federation supplemented paragraph 1 of the cited Plenum Resolution with a provision that, without prejudging issues that may subsequently become the subject of judicial proceedings on the merits of a criminal case, the judge should not limit himself to establishing only whether officials have complied with the formal requirements of the

connection with the consideration of a case by an arbitration court, a civil case, an administrative case, as well as expenses in connection with the fulfillment of the requirements of the Constitutional Court of the Russian Federation in connection with the complaint of citizen E.R. Yurovskikh" // RLS "Consultant Plus".

[47] Resolution of the Plenum of the Supreme Court of the Russian Federation of June 28, 2022 No. 22 "On Amendments to Certain Resolutions of the Plenum of the Supreme Court of the Russian Federation on Criminal Cases" // RLS "Consultant Plus".

law, but is obliged to verify the factual validity of the contested decision. An exception to the grounds for refusing to accept a submitted complaint was also added to the considered Resolution of the Plenum of the Supreme Court of the Russian Federation. Thus, if it is evident from the complaint that the contested resolution, cancelled by the head of the investigative body or the prosecutor, was also previously cancelled by them with the subsequent issuance of a similar decision by the investigator (inquiry officer), then the judge accepts such a complaint for consideration (paragraph 8).

Federal Law No. 383-FZ of 07.10.2022 "On Amendments to the Criminal Procedure Code of the Russian Federation"[48] amended Article 106 of the Criminal Procedure Code of the Russian Federation (bail), providing for the period of validity of this preventive measure and establishing a blanket procedure for its extension by the court.

Federal Law No. 217-FZ of 13.06.2023 introduced amendments to the Criminal Procedure Code of the Russian Federation concerning the provision of additional guarantees to persons accused of committing crimes in the field of entrepreneurial activity when deciding on their detention and on extending the term of its validity[49].

An analysis of the changes that the institution of judicial review has undergone since the introduction of the Criminal Procedure Code of the Russian Federation to the present day demonstrates that the legislator continues to search for its optimal model, including from the point of view of the content and scope of the court's competence aimed at solving the problems of criminal proceedings.

[48] Federal Law of 07.10.2022 No. 383-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".
[49] Federal Law of 13.06.2023 No. 217-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".

Chapter 2. General characteristics of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure

§1. Judicial control as a function of judicial power and justice

Judicial review, being a type of jurisdictional activity of the court[50], is one of the most important functions of the judiciary, the implementation of which is aimed at protecting the constitutional rights and freedoms of the individual throughout the entire criminal proceedings.

In the science of criminal procedure, there are several definitions of the concept of judicial review. One of its most complete definitions from the point of view of its essential features is offered by N.G. Muratova, who understands judicial review as "multifunctional criminal procedural activity of the court, designed to ensure the protection of constitutional rights and freedoms of the individual in pre-trial proceedings, in higher courts and in the execution of procedural decisions, guaranteeing direct verification of the legality and validity of procedural actions and decisions in criminal proceedings" [51].

At the pre-trial stages of criminal proceedings, judicial review is defined as "an independent area of judicial activity consisting of verifying and assessing the legality and validity of restrictions by actions (inactions) or decisions of bodies and officials conducting pre-trial proceedings, of the constitutional rights and freedoms of participants in criminal proceedings and other persons, as well as their access to justice, and the implementation of judicial protection of such rights and freedoms"[52], or as "a form of implementation of judicial power, a system of means provided for by procedural law, aimed at preventing the illegal restriction of the constitutional rights of an individual in

[50] For example, E.V. Vovk divides the activities of the court in criminal proceedings into jurisdictional (criminal proceedings, judicial-executive and judicial-control activities) and non-jurisdictional (organizational and auxiliary activities, office work and others) - see: Vovk E.V. The principle of justice in judicial activity: author's abstract. dis. ... candidate of legal sciences. Rostov-on-Don, 2024. P. 11.

[51] Muratova N.G. The system of judicial review in criminal proceedings: issues of theory, legislative regulation and practice: dis. … Doctor of Law. Ekaterinburg, 2004. Pp.12-13.

[52] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... Cand. of legal sciences. Moscow, 2023. P.40.

criminal proceedings, as well as their restoration of these rights" during pre-trial proceedings[53].

There are also other definitions of judicial control in pre-trial criminal proceedings, which are in many ways similar to those given[54].

The purpose of judicial review at the stage of preliminary investigation, as N.P. Kirillova points out, is to create additional procedural guarantees for participants in criminal proceedings on the part of an independent judiciary[55].

Justice is traditionally understood as "a type of state activity carried out on behalf of the state by special state bodies – courts, aimed at resolving various social conflicts related to actual or alleged violations of legal norms by examining civil, criminal and other cases in court sessions in compliance with the procedural form established by law, endowed with the possibility of applying coercive measures", while the principles of such activity are the principles of independence of justice, unity of judicial power, publicity, administration of justice only by the court, participation of citizens in the administration of justice, adversarial nature and equality of the parties[56].

In terms of content, justice appears as a means of implementing judicial power and a guarantor of direct action, protection and ensuring of the rights and freedoms of man and citizen[57].

In the scientific community there is no single approach to the relationship between the concepts of judicial review at pre-trial stages of criminal proceedings and the activities of the court in administering justice.

This issue is not exclusively theoretical and legal, since its resolution directly affects the determination of the court's competence in the exercise of judicial review, primarily from the point of view of its ontological content.

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[53] Chepurnaya I.V. Judicial review in pre-trial criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2005. P.7.
[54] See, for example: Petrovets V.M. Forms and limits of court resolution of issues in pre-trial proceedings in Russian criminal proceedings: diss. ... Cand. of legal sciences. Tyumen, 2007. P. 18; Melnikov V.Yu. The concept of justice and judicial review in pre-trial proceedings // Court Administrator. 2012. No. 2. P. 5-6.
[55] Kirillova N.P. Determination of the competence of the court in the implementation of judicial review at the stage of preliminary investigation // Laws of Russia: experience, analysis, practice. 2016. No. 4. P. 35.
[56] Mamina O.I. Justice in the mechanism of the rule of law: concepts and reality: author's abstract. dis. ... candidate of legal sciences. Tambov, 2007. P.9.
[57] Kornukova E.V. Constitutional foundations of justice in criminal cases in the Russian Federation: author's abstract. dis. ... candidate of legal sciences. Saratov, 2003. P.9.

Thus, if the function of judicial review is carried out within the framework of the administration of justice, then it must be characterized by all those features that characterize justice as such: the need to comply with the principles of adversarial proceedings and equality of the parties, the requirement for the validity and motivation of judicial acts, etc., which entails, for example, the court's obligation to evaluate the evidence presented.

On the contrary, if the exercise of judicial review is an independent function of the judiciary, then the determination of the court's competence in its exercise requires separate justification.

A number of researchers believe that the implementation of judicial review is one of the areas of the court's activity within the framework of the administration of justice.

Thus, N.N. Kovtun notes that the procedure of judicial review is a form of administration of justice, a form of resolution of a social and legal dispute (conflict) of the parties through a judicial procedure and a generally binding judicial act, which is an act of justice[58].

I.L. Petrukhin also called judicial review a form of administration of justice, motivating this by the fact that judicial review is not limited to the unmotivated, unfounded acceptance of the investigator's petition on faith, it is carried out in compliance with the procedure inherent in justice. The author notes that the judge must have the right to demand the provision of materials substantiating the petition, to examine these materials, to return the petition for additional substantiation, to interrogate as witnesses persons who confirm or refute the petition[59].

Judicial review as a form of administration of justice is also considered by T.I. Andryushchenko[60], V.M. Bozrov[61], S.V. Burmagin[62], L.A. Voskobitova[63], M.M.

[58] Kovtun N.N., Yartsev R.V. Judicial control over the legality and validity of actions and decisions of officials conducting criminal proceedings in Russia (Chapter 16 of the Criminal Procedure Code of the Russian Federation). 2nd ed. Nizhny Novgorod, 2008. Page 13.
[59] Petrukhin I.L. Judicial power: control over the investigation of crimes. Moscow, 2008. P.131-132.
[60] Andryushchenko T.I. The court as a subject of proof in criminal proceedings: diss. ... candidate of legal sciences. Volgograd, 2012. P.9.
[61] Bozrov V.M. Modern problems of Russian justice in criminal cases in the activities of military courts: issues of theory and practice. Ekaterinburg, 1999. P.18.
[62] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.140-141.
[63] Voskobitova L.A. Mechanism of implementation of judicial power through criminal proceedings: author's abstract. dis. ... Doctor of Law. Moscow, 2004. P.13.

Vydrya[64], A.P. Guskova[65], G.I. Zagorsky[66], E.E. Korobkova[67], A.I. Laliev[68], V.M. Lebedev[69], I.L. Makhorkin[70], O.A. Myadzelets[71], E.A. Ovchinnikova[72], R.R. Umyarova[73] and other scientists.

91.8% of the judges surveyed also attributed judicial review to the court's activities in administering justice[74].

At the same time, the science of criminal procedure is aware of another approach, according to which judicial review and the administration of justice (the resolution of a criminal case on the merits) are considered as independent functions (forms) of judicial power.

Thus, V.N. Galuzo states that judicial control is not included in the content of the concept of justice, believing that it is an independent criminal procedural function of the court[75].

In his works, N.A. Kolokolov also noted that the functions of the judiciary are not limited to the implementation of justice alone[76], that in its goals and objectives, methods, techniques, and limits of research, judicial review of the legality and validity of individual decisions or actions of preliminary investigation bodies is fundamentally different from what is commonly called justice in procedural science[77].

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[64] Vydrya M.M. Criminal procedural guarantees in court. Krasnodar, 1980. P.51.
[65] Guskova, A.P. On the issue of the effectiveness of justice // Bulletin of Omsk University. Series: Law. 2008. No. 1(14). P. 38.
[66] Judicial power and justice in the Russian Federation: course of lectures / edited by V.V. Ershov. Moscow, 2011. Pp.490-491.
[67] Korobkova E.E. The relationship between the functions of judicial review and resolution of a criminal case in the activities of the court // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2012. No. 6. P. 97.
[68] Laliev A. I. Judicial review and justice: concept, features, problems and relationships // Society and Law. 2010. No. 3. P.225-226.
[69] Lebedev V.M. Judicial power in the protection of the constitutional right to freedom and personal inviolability: author's abstract. dis. … candidate of legal sciences. Moscow, 1998. P.9.
[70] Makhorkin I.L. Powers of the court and their implementation at the stage of preliminary investigation in criminal proceedings in Russia: diss. ... candidate of legal sciences. Moscow, 2009. P.10, 48.
[71] Myadzelets O.A. Judicial review of termination of criminal case and criminal prosecution: author's abstract. dis. ... candidate of legal sciences. Moscow, 2008. P.11, 17.
[72] Ovchinnikova E.A. Competence and powers of the court (judge) in Russian criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Ulyanovsk, 2020. P.22.
[73] Umyarova R.R. Judicial control over the legality and validity of investigative actions in criminal proceedings in Russia: law, doctrine and practice: diss. ... candidate of legal sciences. Nizhny Novgorod, 2024. P. 11.
[74] See Appendix No. 4.
[75] Galuzo V.N. Judicial control over the legality and validity of detention of suspects and accused at the stage of preliminary investigation: author's abstract. dis. … candidate of legal sciences. Moscow, 1995. P.15.
[76] Kolokolov N.A. Judicial review: some problems of history and modernity: monograph. Kursk, 1996. P.58.
[77] Kolokolov N.A. Judicial power as a general legal phenomenon: dis. … Doctor of Law. Vladimir, 2006. P.285.

O.V. Khimicheva notes that the function of judicial review is subsidiary in nature in relation to the function of resolving a case on its merits (justice), since its implementation is subordinated to the tasks of justice[78]. I.Yu. Tarichko is of a similar opinion[79].

L.A. Aleksandrova[80], D.M. Berova[81], L.M. Volodina[82], A.A. Endoltseva[83], T.Z. Zinatullin[84], A.E. Zonova[85], O.G. Ivanova[86], N.A. Lopatkina[87], A.N. Ryzhikh[88], M.K. Sviridov[89], O.Yu. Tsurluy[90]and other authors also distinguish between justice and judicial review as independent functions (forms) of judicial power.

In science, there are also other points of view on the relationship between the concepts of justice and judicial review.

In particular, O. O. Avakov believes that only certain forms of judicial activity in pre-trial proceedings (for example, consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation) have a significant similarity with justice and can be considered as identical to it[91].

A.V. Solodilov proposes a separate classification of types of judicial review, dividing them into two categories: types of judicial review, the implementation of which represents justice, and types of judicial review, the implementation of which represents

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[78] Khimicheva O.V. Conceptual foundations of procedural control and supervision at pre-trial stages of criminal proceedings: author's abstract. dis. ... Doctor of Law. Moscow, 2004. P.35.

[79] Tarichko I. Yu. The function of judicial review in Russian criminal proceedings: author's abstract. dis. … candidate of legal sciences. Omsk, 2004. P. 18.

[80] Aleksandrova L.A. The relationship between the functions of judicial control and justice in criminal proceedings of the Russian Federation // Criminal Justice. 2016. No. 1. P. 17.

[81] Berova D. M. Functions of the court in criminal proceedings // Philosophy of Law. 2010. No. 6. P. 177.

[82] Volodina L.M. Mechanism for ensuring individual rights in Russian criminal proceedings: author's abstract. dis. … Doctor of Law. Ekaterinburg, 1999. P.30.

[83] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... Cand. of legal sciences. Moscow, 2023. P.12.

[84] Zinatullin T.Z. Administration of justice - a function of Russian criminal procedure // Russian judge. 2001. No. 6. P. 12.

[85] Zonova A.E. Powers of the court at the stage of initiating a criminal case: dis. ... candidate of legal sciences. Ekaterinburg, 2009. P.8.

[86] Ivanova O.G. Criminal procedure proceedings for the court's selection of a preventive measure: criminal procedure form and features of proof: dis. ... candidate of legal sciences. Krasnoyarsk, 2019. P.16.

[87] Lopatkina N.A. Institute of judicial review at pre-trial stages of criminal proceedings in Russia: diss. … candidate of legal sciences. Krasnodar, 2002. P.49.

[88] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: dis. ... candidate of legal sciences. Ekaterinburg, 2008. P.7.

[89] Sviridov M.K. The nature of judicial control over preliminary investigation // Bulletin of Tomsk State University. 2008. No. 311. P. 120.

[90] Tsurluy O.Yu. Fundamentals of the judicial procedure for considering complaints in pre-trial stages of criminal proceedings. M., 2013. P.116.

[91] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.47.

the activity of the court in giving legal force to the decisions of the investigative bodies and the prosecutor[92].

Trying to reconcile different points of view, T. Yu. Vilkova notes: in the narrow, traditional sense, justice was usually understood as exclusively the consideration of a case by a court of first instance on the merits, with a court hearing with the participation of the parties, establishing the factual circumstances of the case and applying the substantive law to specific legal relations <…>. However, in recent years, this term has increasingly been used in a broad sense: justice is recognized as "any activity of the court that is carried out in accordance with the procedure of legal proceedings established by law". This activity, as the author notes, also includes the consideration by the court of various issues in pre-trial proceedings in criminal cases (parts 2 and 3 of Article 29 of the Code of Criminal Procedure)[93].

D.M. Berova[94], E.E. Korobkova [95], V.A. Lazareva[96] and other scientists draw attention to the difference in understanding justice in the narrow and broad senses.

Comparison of the concepts of justice and judicial review is impossible outside the doctrine of criminal procedural functions.

Thus, V.V. Gorban, dividing the powers of the court into powers of a general nature, which he calls functions (justice, judicial control, etc.) and powers proper (powers of a specific nature), gives the following definition of the criminal procedural function of the court: “a duty (power) of a general nature imposed on it by the criminal procedural law to perform the tasks and achieve the goals (purpose) of the criminal process” [97].

M.S. Strogovich calls criminal procedural functions separate types, separate directions of criminal procedural activity[98]. P.S. Elkind understands criminal procedural

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[92] Solodilov A.V. Judicial control over the conduct of investigative actions and decisions of the prosecutor and investigative bodies restricting the constitutional rights and freedoms of citizens in criminal proceedings in Russia: diss. ... candidate of legal sciences. Tomsk, 1999. P. 54.

[93] Vilkova T.Yu. Principles of criminal proceedings and general conditions of judicial proceedings characterizing the activities of the court // Russian Justice. 2017. No. 1. P. 36.

[94] Berova D. M. Functions of the court in criminal proceedings // Philosophy of Law. 2010. No. 6. P. 177.

[95] Korobkova E.E. Correlation of functions of judicial control and resolution of criminal case in the activities of the court // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2012. No. 6. P.96-97.

[96] Lazareva V.A. Theory and practice of judicial protection in criminal proceedings. Samara, 2000. P.59-60.

[97] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2008. P.9.

[98] Strogovich M.S. Course of Soviet criminal procedure. Moscow, 1968. Vol. 1. P. 188.

functions as defined by the norms of law and expressed in the corresponding directions of criminal procedural activity, the special purpose and role of its participants[99]. A.M. Larin defines criminal procedural functions as types (components, parts) of criminal procedural activity, which differ in special direct goals achieved as a result of the proceedings[100].

I.V. Maslov, who studies criminal procedural functions, notes that most definitions of the concept of procedural function, formulated by various authors in different periods, are revealed through the definition of "direction", which is usually understood as the main direction of activity. However, according to I.V. Maslov, the procedural function is not the main, but the only direction of activity, conditioned by the judicial purpose, arising from the procedural interest or obligation[101].

Summarizing the above points of view, N.P. Kirillova proposes a systematic approach to defining the essence of procedural functions: “When defining the concept and content of a function, it is necessary to take into account not only the direction of the subject’s activity, but also its content, as well as the tasks facing the subject of criminal procedural activity, <…> and the purpose of the stages of criminal proceedings in which procedural activity is implemented” [102].

In science, three main criminal procedural functions are distinguished: resolution of a criminal case, prosecution and defense.

Adhering to this approach, I.Yu. Chebotareva notes that the control function is auxiliary in the list of main functions and relates to the function of resolving a criminal case[103].

P.S. Elkind identifies six functions of participants in criminal proceedings (prosecution, defense, judicial review and resolution of the criminal case, etc.) and raises the problem of assigning the function of resolving a criminal case not only to the court,

[99] Elkind P.S. The essence of Soviet criminal procedural law. L., 1963. P.54.
[100] Larin A.M. Criminal case investigation: procedural functions. Moscow, 1986. Page 5.
[101] Maslov I.V. Criminal procedural functions of participants in criminal proceedings. M., 2018. P.42-44.
[102] Kirillova N.P. Procedural functions of professional participants in adversarial criminal proceedings. Monograph. St. Petersburg, 2007. P.55.
[103] Chebotareva I.Yu. Criminal procedural function of control in the hierarchical system of other competing functions carried out by officials of state bodies in pre-trial proceedings: author's abstract. dis. ... candidate of legal sciences. Ekaterinburg, 2016. P.10.

but also to other participants in criminal proceedings, noting that "a criminal case does not always reach the court: it can be terminated by the person conducting the inquiry, the investigator, the prosecutor in the pre-trial stages of the criminal process. This means that a criminal case can be resolved not only by the court, but also by other competent state bodies" [104]. M.S. Strogovich also noted that during the preliminary investigation of a case, the function of resolving the case within certain limits belongs to the investigator and the prosecutor, since they can, if there are grounds for doing so, terminate the criminal case, and the termination of the case, in the author's opinion, is its resolution on the merits[105].

At the same time, the approach that remains dominant in science is that the resolution of a criminal case is the exclusive function of the court, since this function presupposes the possibility of the subject of criminal procedural relations making, based on the results of the consideration of a criminal case, the entire spectrum of possible procedural decisions, including the decision to find a person guilty, which is attributed to the exclusive prerogative of the judiciary.

S.V. Burmagin identifies six types of criminal procedural functions of the court: case resolution, law enforcement, law-restorative, control, provisional and preventive functions. At the same time, the author attributes the function of judicial control not only to the pre-trial stages of criminal proceedings, noting that it is implemented at various stages, including when considering the case on the merits, when the subject of judicial control is the verification of the legality and validity of the actions of the bodies that carried out the preliminary investigation[106].

Other researchers adhere to a more traditional approach for the science of criminal procedure on the implementation of judicial review only at pre-trial and other stages of criminal proceedings, in addition to the trial in the court of first instance. In particular, N.G. Muratova notes that judicial review in criminal proceedings is a manifestation of judicial power in pre-trial proceedings, as well as in judicial proceedings on a criminal case in higher courts, during the execution of judicial and other decisions that have

[104] Elkind P.S. The essence of Soviet criminal procedural law. L., 1963. P.63-64.
[105] Strogovich M.S. Course of Soviet criminal procedure. Moscow, 1968. Vol. 1. P. 200.
[106] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.110, 129-130.

entered into legal force and have not been cancelled in accordance with the procedure established by law[107].

Distinguishing the function of resolving a case on its merits from the function of judicial review, I.Yu. Tarichko draws a line between them not only, as is customary, by the criterion of the court's authority to find a person guilty, but also by the criterion of the court's activity: "When considering a criminal case on its merits, the court takes a relatively passive role of an arbitrator. In implementing the function of judicial review, the judge is active; he controls the legality and validity of decisions at the stage of preliminary investigation" [108]. Zh.S. Senkina also draws attention to the need to increase the court's activity in judicial review proceedings and its limitations in legal proceedings[109].

V.V. Gorban identifies three functions performed by the court at the pre-trial stages of criminal proceedings: the function of judicial control, human rights protection and preventive functions[110].

An analysis of the above positions leads us to the conclusion that judicial review at pre-trial stages of criminal proceedings is an independent criminal procedural function of the court. Since the purpose of this work is not to formulate the concept of the function of a participant in criminal proceedings, we will use the generally accepted concept of a function as the main direction of activity of an agency or official.

In moving on to the formation of our position on the relationship between justice and the function of judicial review, we should turn to the provisions of current legislation.

Thus, Article 118 of the Constitution of the Russian Federation proclaims that justice in the Russian Federation is administered only by the court. A similar provision is contained in Part 1 of Article 8 of the Criminal Procedure Code of the Russian Federation.

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[107] Muratova N.G. The system of judicial review in criminal proceedings: issues of theory, legislative regulation and practice: dis. … Doctor of Law. Ekaterinburg, 2004. P. 13.

[108] Tarichko I. Yu. The function of judicial review in Russian criminal proceedings: author's abstract. dis. … candidate of legal sciences. Omsk, 2004. P. 7.

[109] Senkina Zh.S. Activity of the court in criminal procedural proof: author's abstract. dis. ... candidate of legal sciences. Nizhny Novgorod, 2014. P.11.

[110] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2008. P.9.

According to paragraph 2, part 1, article 6 of the Criminal Procedure Code of the Russian Federation, one of the purposes of criminal proceedings is to protect the individual from illegal restrictions of his or her rights and freedoms, which is the goal of judicial review activities at the pre-trial stages of criminal proceedings.

Clause 50 of Article 5 of the Criminal Procedure Code of the Russian Federation establishes that a court hearing should be understood as a procedural form of administration of justice during pre-trial and trial proceedings in a criminal case. Thus, the legislator directly indicates that the court's activities at the pre-trial stages of criminal proceedings are activities for the administration of justice.

This approach is consistent with the opinion expressed in the scientific literature that the procedural form of administration of justice in criminal cases is a trial conducted for the purpose of implementing the powers of the court, as defined in Article 29 of the Criminal Procedure Code of the Russian Federation[111].

Considering that, according to paragraph 51 of Article 5 of the Criminal Procedure Code of the Russian Federation, a trial is a court session of the courts of first, second, cassation and supervisory instances, and also that the powers of the court, enshrined in Article 29 of the Criminal Procedure Code of the Russian Federation, are implemented, including at the pre-trial stages of the process, it becomes clear why justice is administered within the framework of any court sessions, including those conducted in the order of judicial review.

Clause 54 of Article 5 of the Criminal Procedure Code of the Russian Federation establishes that a judge is an official authorized to administer justice. Part 1 of Article 8.1 of the Criminal Procedure Code of the Russian Federation states that when administering justice in criminal cases, judges are independent and subject only to the Constitution of the Russian Federation and federal law.

According to Article 401.6 of the Criminal Procedure Code of the Russian Federation, a turn for the worse during a cassation review of a judicial act is possible only in cases where violations of the law have been committed that distort the very essence of

[111] Judicial power and justice in the Russian Federation: course of lectures / edited by V.V. Ershov. Moscow, 2011. P.492.

justice and the meaning of a judicial decision as an act of justice. At the same time, scientific literature notes that the prohibition of a turn for the worse applies to cases of appeal not only of a sentence, but also of interim judicial decisions made in the course of judicial review[112].

A systematic analysis of the provisions considered leads us to the conclusion that the current criminal procedure legislation refers to justice as all procedural activities of the court, and justice itself is the essence, the core of this activity. Judicial review is thus one of the forms of implementation of justice, which in this case is understood in a broad sense.

The stated position is also based on the approaches formulated by the Constitutional Court of the Russian Federation. In particular, paragraph 5 of the Resolution of the Constitutional Court of the Russian Federation dated 14.11.2017 No. 28-P states: the right to judicial protection, being a universal legal means of protecting the rights and freedoms of man and citizen, performs a security and restorative function in relation to all other constitutional rights and freedoms, which is predetermined by the special role of the judiciary and its prerogatives in the administration of justice arising from Articles 18, 118 (part 2), 120 (part 1), 125, 126 and 128 (part 3) of the Constitution of the Russian Federation, characterizing the substantive side of the procedural activity of the court as such, including in the exercise of judicial control over the legality of decisions and actions (inaction) of public authorities[113].

The Ruling of the Constitutional Court of the Russian Federation dated 23.12.2014 No. 3005-O states that when considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the court should not limit itself to merely fulfilling the formal requirements of the criminal procedure law and refuse to verify the factual validity of the contested decision of the preliminary investigation body

[112] Gertsen P.O. Implementation of the right to appeal and review of interim court decisions made during pre-trial proceedings: ensuring a balance of private and public interests: diss. ... Cand. of legal sciences. Tomsk, 2023. Pp. 162, 184.
[113] Resolution of the Constitutional Court of the Russian Federation of 14.11.2017 No. 28-P "On the case of verifying the constitutionality of certain provisions of the Criminal Procedure Code of the Russian Federation in connection with the complaint of citizen M.I. Bondarenko" // RLS "Consultant Plus".

and has the right to make its own decision on this issue, since otherwise it may lead to a distortion of the very essence of justice[114].

Thus, it follows from the position of the Constitutional Court of the Russian Federation that justice is the content of the procedural activity of the court.

A number of resolutions of the Plenum of the Supreme Court of the Russian Federation demonstrate the opposite position: justice is a form of procedural activity of the court.

Thus, paragraph 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 20.12.2011 No. 21 "On the practice of applying the legislation on the execution of a sentence by the courts" states that the consideration and resolution of issues related to the execution of a sentence is carried out in the form of justice in an open court session. In this regard, the court explains to the participants in the court session their rights, obligations and responsibilities and ensures the opportunity to exercise these rights (Part 1 of Article 11 of the Criminal Procedure Code of the Russian Federation)[115]. According to paragraph 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance withArticle 125 of the Criminal Procedure Code of the Russian Federation", consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation takes place in the form of administration of justice according to the rules of adversarial proceedings in an open court session[116].

Thus, from the point of view of the Supreme Court of the Russian Federation, justice is a form of implementation of various functions of the court, including judicial review.

The above positions of the highest judicial authorities cannot be considered mutually exclusive, since they are primarily concerned with justice as an activity of the

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[114] Ruling of the Constitutional Court of the Russian Federation dated 23.12.2014 No. 3005-O “On the refusal to accept for consideration the complaint of citizen Israilova Tabarka Tagirovna on the violation of her constitutional rights by the provisions of parts 1 and 5 of Article 125 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

[115] Resolution of the Plenum of the Supreme Court of the Russian Federation of 20.12.2011 No. 21 “On the practice of applying legislation on the execution of sentences by courts” // RLS “Consultant Plus”.

[116] Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 “On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

court that is subject to the principles of adversarial proceedings and equality of the parties with freedom of evaluation of evidence by an independent court, that is, with the essential content of justice from the point of view of its subordination to constitutional and legal principles.

In a similar way, P.A. Lutsenko, believing that judicial control is carried out in the form of justice, understands the latter as a way of carrying out judicial activity, a special procedural procedure, a number of fundamental provisions of which have the status of constitutional norms and give it a specificity that allows for the delimitation of judicial activity from the activity of other government bodies[117].

There are also other points of view in science that reject the above approaches of the highest judicial authorities. In particular, D.M. Berova denies the legal nature of judicial review, referring, among other things, to the fact that illegal and unfounded decisions of the investigator can be cancelled by both the head of the investigative body and the prosecutor: "what kind of justice is this that can be carried out both by the court and by another state body?", the author asks, seeing in this approach a contradiction with the above provision of Article 118 of the Constitution of the Russian Federation[118].

We cannot agree with this position, since the decisions of the prosecutor and the head of the investigative body do not have the characteristics of an act of justice, are not adopted in an adversarial procedure, and do not have greater legal force than a court decision on the same issue. The legislator has provided for various ways to protect the rights and legitimate interests of participants in criminal proceedings: both those realized through an appeal to the court and those carried out within the framework of other jurisdictional procedures.

In addition, as follows from the position of V.V. Gorban, similar powers can ensure the implementation of several functions simultaneously[119], in connection with which the possibility of canceling the investigator's decision, for example, by the prosecutor does

[117] Lutsenko P.A. Judicial review in pre-trial stages of criminal proceedings of the Russian Federation: author's abstract. dis. ... candidate of legal sciences. Moscow, 2014. P.11.
[118] Berova D. M. Functions of the court in criminal proceedings // Philosophy of Law. 2010. No. 6. P. 177.
[119] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2008. P.12.

not lead to a confusion of procedural functions and, on the contrary, indicates that the corresponding powers of the prosecutor do not have a judicial character.

In our opinion, judicial review should be considered a form of administration of justice, since it is the latter that fills this form with that ontological legal content, which is based on constitutional and legal principles and which remains unchanged even with constant changes in the legal regulation of individual aspects of this form.

Thus, the analysis of the above provisions of legislation, legal positions of the highest judicial authorities and scientific points of view leads us to the conclusion that judicial review at pre-trial stages of criminal proceedings is an independent criminal procedural function (the main area of activity, general powers) of the court, which is one of the forms of implementation of justice , is inextricably linked with it and is subject to the same principles on which the model of modern Russian justice is built , while this function is distinguished by its originality, due to the difference in its own procedural goals and the goals of resolving the case on the merits, as well as the nature of the stages of criminal proceedings (pre-trial stages) at which it is implemented. Through the prism of this understanding of judicial review, the competence of the court in its implementation is subject to determination.

§2. General characteristics of the competence of the authority subject of public law relations

The term competence is a general legal term and has an interdisciplinary nature.

B.M. Lazarev, who was at the origins of the domestic theory of competence, considered this concept both from the point of view of actual competence (competence), which he understood as “the range of issues in which a given person or persons have knowledge (“know something”)”, and from the point of view of official competence, which is defined through “the range of powers (rights and obligations “to know something”)”[120].

[120] Lazarev B.M. Competence of governing bodies. Moscow, 1972. P.11.

Modern criminal procedure law also understands competence in both of these meanings. Thus, Part 1 of Article 58 of the Criminal Procedure Code of the Russian Federation establishes that "a specialist is involved in the case to explain to the parties and the court issues within his professional competence." In this case, we are talking about competence in the first meaning - actual competence. In turn, Part 3 of Article 11 of the Criminal Procedure Code of the Russian Federation establishes that "the court, the prosecutor, the head of the investigative body, the investigator, the inquiry body, the head of the inquiry body, the head of the inquiry unit and the inquiry officer take security measures within the limits of their competence in relation to the said persons [in relation to whom there is a threat of unlawful encroachment - author's note]." In this case, we are talking about competence in the second meaning - official competence.

In legal science, the definition of the official competence of a subject of law through the concept of powers is considered established[121].

Thus, S.S. Alekseev understood competence as “the content and scope of powers that a state body, as well as a particular official, has.” The author divided competence into general and special[122]. V.S. Nersesyants defined the competence of a state body (official) as “the totality of its state powers, i.e. its rights and obligations” [123]. N.A. Vlasenko defines the competence of a state body as “a formally defined scope of rights and obligations that a state body is granted to perform the tasks and functions of the state that it implements” [124].

The aggregate of powers of the legal authority as the central link of its competence is also indicated by M.V. Antonov[125], F.R. Gadzhieva[126], V.N. Kozlova[127], O.E.

[121] Constitution of the Russian Federation. Doctrinal Commentary / head of the author's staff Yu. A. Dmitriev [et al.]; scientific editor Yu. I. Skuratov. 2nd ed., amended and supplemented. Moscow, 2013. Page 625.
[122] Alekseev S.S. State and Law: Basic Course. Moscow, 1994. P. 41-42.
[123] Nersesyants V.S. General Theory of Law and State. Moscow, 2000. P.263.
[124] Theory of State and Law / edited by Klishas A.A. M., 2019. P.118.
[125] Antonov M.V. Theory of State and Law. Moscow, 2018. P.35.
[126] Gadzhieva F.R. Competence of arbitration courts: issues of theory and practice: author's abstract. dis. … doctor of law. Saratov, 2010. P.10.
[127] Kozlova V.N. On the relationship between the concepts of "competence of courts", "jurisdiction" and "jurisdiction of civil cases" // Humanitarian, socio-economic and social sciences. 2019. No. 7. P. 92.

Kutafin [128], Yu.K. Osipov [129], I.L. Chestnov [130] and others. This issue, with rare exceptions[131], does not cause controversy in science.

There is no debate about the content of the powers of a legal entity, which traditionally include its rights and obligations.

At the same time, Yu. A. Tikhomirov notes that the rights and obligations of a subject of public law, which form the content of its powers, cannot be understood in isolation from each other; these powers consist of "rights-obligations that cannot be ignored in the public interest" [132]. According to V. S. Nersesyants, the rights of a state body (institution, official) are also its obligation to act in accordance with the rights granted to it, to exercise the relevant state powers[133]. A similar approach to the content of powers is adhered to by V. V. Gorban[134], M. Yu. Dityatkovsky[135], Yu. K. Osipov[136] and other researchers.

We share the above positions and rights of the court in the implementation of judicial review, and simultaneously understand them as its duties, that is, as its powers. For example, the right of the court to extend the period of detention in accordance with Part 7 of Article 108 of the Criminal Procedure Code of the Russian Federation is simultaneously its duty to make a corresponding decision, if there are factual and legal grounds for this.

It should be noted that the given understanding of the powers of a subject of public law relations does not exclude the presence of discretionary powers, the definition of the legal nature of which is beyond the scope of this study.

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[128] Kutafin O.E., Sheremet K.F. Competence of local councils. Moscow, 1982. P.30.
[129] Osipov Yu.K. Jurisdiction of legal cases: author's abstract. dis. … Doctor of Law. Sverdlovsk, 1974. P.7.
[130] Chestnov I.L. Theory of State and Law. Part 1. Theory of the State. St. Petersburg, 2016. P.68.
[131] See, for example: Kovachev D.A. Function, tasks, competence and legal capacity of a state body // News of higher educational institutions. Jurisprudence. 1985. No. 4. P. 44-45.
[132] Tikhomirov Yu.A. Theory of competence. M., 2001. P.56.
[133] Nersesyants V.S. General Theory of Law and State. Moscow, 2000. P.263.
[134] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Krasnodar, 2008. P.11.
[135] Dityatkovsky M.Yu. The concept of individual state powers with which local government bodies are or may be endowed // Modern Law. 2006. No. 10. P. 75.
[136] Osipov Yu.K. Jurisdiction of legal cases: author's abstract. dis. … Doctor of Law. Sverdlovsk, 1974. P.7.

Despite the unity of the scientific community in its opinion regarding the definition of powers as the central link in the competence of a public authority, scientists disagree on the issue of including other legal elements in its structure.

Thus, Yu.A. Tikhomirov identifies in the competence of the subject of public-law relations, in addition to powers, the following elements: normatively established goals, subject of jurisdiction, responsibility for failure to implement decisions, without which the competence loses its public-law security. At the same time, the author defines the subject of jurisdiction as legally defined spheres and objects of influence[137].

V.V. Gorban defines the subject of jurisdiction as the sphere of application (implementation) of the rights and obligations of the court in a certain system of social relations; the author points out the similarity of this term with the concept of "jurisdiction"[138]. V.O. Luchin also includes in the concept of competence of the subject of law, in addition to the totality of rights and obligations, the subjects of jurisdiction[139].

Other authors, in particular S.A. Sosnovsky, point out that goals and objectives are a prerequisite for establishing the authority's competence, but they themselves are not included in the competence. S.A. Sosnovsky draws attention to the ambiguity of approaches to the question of whether the subjects of jurisdiction are within the competence of a government body (official) or are outside its scope, since the subjects of jurisdiction [including the subject of judicial review - author's note] characterize those social relations at which the activities of a government body (official) are directed, in contrast to the competence itself, which is a means of regulating these relations[140].

N.A. Ignatyuk distinguishes between the concepts of subject matter and competence and includes in the latter also the goals, objectives and functions of a state

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[137] Tikhomirov Yu.A. Theory of competence. M., 2001. P.55-56.

[138] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2008. P.52.

[139] Dissenting opinion of the judge of the Constitutional Court of the Russian Federation V.O. Luchin on the Resolution of the Constitutional Court of the Russian Federation of November 30, 1992 No. 9-P "On the case of verifying the constitutionality of the Decrees of the President of the Russian Federation of August 23, 1991 No. 79 "On the suspension of the activities of the Communist Party of the RSFSR", of August 25, 1991 No. 90 No. On the property of the CPSU and the Communist Party of the RSFSR No. and of November 6, 1991 No. 169 "On the activities of the CPSU and the CPSU of the RSFSR", as well as on verifying the constitutionality of the CPSU and the CPSU of the RSFSR" // RLS "Garant".

[140] Sosnovsky S.A. Legal problems of distribution of competence of federal executive bodies: author's abstract. dis. … candidate of legal sciences. St. Petersburg, 2011. Pp.11-12.

body (official)[141]. B.M. Lazarev[142], N.E. Baradanchenkova[143] and other authors do not include subject matter in the content of competence.

The approaches to the content of the competence of the authority subject of public-law relations are not exhausted by the above positions. We will focus on the position of the majority of researchers who define the essence of the competence of a state body, including a court, through the totality of its powers.

At the same time, we agree with those scholars who do not include the subject of jurisdiction, as well as the goals and objectives of the subject of law, in the structure of competence. Thus, the subject of jurisdiction is determined by those social relations that are subject to influence from the side of the authoritative subject of law, while the powers that form the essence of its competence are the means of this influence. Social relations in this sense cannot be an element of competence, since it is directed at them.

Thus, the subject of jurisdiction and competence, although interconnected, neither of them is part of the other. At the same time, the subject of jurisdiction is a prerequisite for the formation of competence, since its specificity determines the necessary and sufficient set of procedural means for effective influence on it (for resolving the legal conflict that has arisen).

The goals and objectives of the legal authority, including the court, are not themselves a direct means of influencing public relations, and therefore they are not part of the competence, but they are also a prerequisite for its formation, since, including from the point of view of the need to achieve/solve them, the optimal set of means (powers) for such influence is determined.

With regard to the sphere of criminal proceedings, the general approach to determining the content of the competence of a state body (official) does not undergo any changes: competence is defined as “the totality of powers established by the criminal procedure law, within the limits specific to each body and official” [144].

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[141] Ignatyuk N.A. Competence of federal ministries of the Russian Federation. Moscow, 2003. P.97, 100.
[142] Lazarev B.M. Competence of governing bodies. Moscow, 1972. P.45-46.
[143] Baradanchenkova N.E. Analysis of views on the concept of "competence" in the science of Russian civil procedure // Russian Law Journal. 2014. No. 3. P. 171.
[144] Michurina O.V. On the competence of state bodies and officials in criminal proceedings and its delimitation using the example of inquiry bodies // Russian judge. 2006. No. 6. P. 28.

In this case, dividing the powers of the court into powers of a general nature, which are functions (judicial control, justice, etc.), and powers proper (powers of a specific nature), V.V. Gorban understands the latter as "a set of obligations of a specific nature, established in accordance with criminal procedural rules, applied by the court in specific legal relations to implement its functions in criminal proceedings with the aim of achieving its purpose" [145].

A.N. Ryzhikh proposes to understand the powers of the court at the pre-trial stages of criminal proceedings as "means of legally binding and state-coercive nature, enshrined in the norms of criminal procedural law, necessary and sufficient for achieving procedural goals and solving specific tasks of the court at these stages of the process as an authoritative participant in criminal procedural activity, the application of which is mandatory in situations and forms determined by law" [146].

Considering that the goals of judicial review are achieved through the issuance of procedural decisions in the course of judicial examination of the circumstances included in its subject matter, the following definition of the court's competence should be formulated.

The competence of the court in the exercise of judicial review at the pre-trial stages of criminal proceedings is the totality of the court's powers to consider judicial review proceedings by establishing, by criminal procedural means, the circumstances that are the subject of judicial review, and making decisions in the course of and based on the results of these proceedings procedural decisions.

The structure of the court's competence in the exercise of judicial review thus consists of two elements: the court's authority to participate in the process of proof, including the authority to carry out investigative and other procedural actions, as well as the court's authority to make procedural decisions.

Considering that the subject of jurisdiction, as well as the goals and objectives of the legal authority, are prerequisites for the formation of its competence, the goals and

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[145] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2008. P. 9, 11.

[146] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: dis. ... candidate of legal sciences. Ekaterinburg, 2008. P.7.

objectives of judicial review activities, as well as the specifics of its subject, are thus prerequisites for the formation of the court's competence in the exercise of judicial review at the pre-trial stages of criminal proceedings.

The sufficiency of procedural means for the court to resolve specific issues at the pre-trial stages of criminal proceedings, mentioned by A.N. Ryzhikh, influences the formation of the limits of the court's competence.

In his dissertation research, D.S. Merlakov understands the limits of competence of subjects conducting pre-trial proceedings (the researcher does not include the court among them, calling it a subject of criminal proceedings) as "restrictions on the powers of the relevant subjects to carry out types of their procedural activities based on the rules of jurisdiction enshrined in the Criminal Procedure Code of the Russian Federation" [147].

The given definition is important from the point of view of determining the limits of competence by limiting the powers included in it. At the same time, no limitation of competence should dilute the goals of its assignment to the subject of law. The question of which powers are within the boundaries of competence and which are beyond it should be decided from the standpoint of their sufficient volume.

Thus, just as the limits of proof in a criminal case reflect the quantitative characterization of the totality of evidence from the point of view of its sufficiency[148], the limits of the court's competence must be determined by the sufficiency of the powers necessary to influence the legal relations that constitute the essence of the subject of the court's jurisdiction.

In this regard, we propose the following definition. The limits of the court's competence in the exercise of judicial review at the pre-trial stages of criminal proceedings are the totality of the court's powers sufficient to establish the circumstances included in the subject of judicial review and to consider the filed complaint or the stated petition.

[147] Merlakov D.S. Criminal procedural competence of entities conducting pre-trial proceedings: dis. ... candidate of legal sciences. Omsk, 2023. Pp. 12-13, 53-54.
[148] Course of criminal procedure / edited by L.V.Golovko. 2nd ed., corrected. M., 2017. P.437.

In the scientific literature it is noted that judicial control over the legality of investigative actions and decisions of investigative bodies and the prosecutor that restrict the constitutional rights and freedoms of citizens is characterized by its own special, specific mechanism of implementation, that is, the mechanism of criminal procedural regulation of certain relations[149].

L.A. Voskobitova understands the mechanism for implementing judicial power through criminal proceedings as a set of procedural and legal elements, means and methods that, in a certain sequence, ensure the functioning of judicial power and the implementation of judicial-authority relations in criminal proceedings for the court to fulfill the purpose of criminal proceedings[150].

M.A. Umarova in her study devoted to judicial review as an inter-branch institution points out that the structure of its mechanism includes normative and legal support, institutional basis, instrumental basis (legal means, methods, techniques and form) and organizational and support basis. At the same time, the dynamic characteristics of the judicial review mechanism are manifested in its procedural stages[151].

I.L. Makhorkin defines the mechanism for implementing the powers of the court as a set of means of influence of the court on the participants of criminal proceedings in order to ensure their proper behavior by performing criminal procedural actions and making decisions carried out within the framework of legal relations in the form established by the criminal procedural law, by implementing the powers granted to the court[152]. I.L. Makhorkin names the functions of the court, the limits of its powers, as well as criminal procedural guarantees as elements of the mechanism for implementing the powers of the court[153].

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[149] Solodilov A.V. Judicial control over the conduct of investigative actions and decisions of the prosecutor and investigative bodies restricting the constitutional rights and freedoms of citizens in criminal proceedings in Russia: diss. ... candidate of legal sciences. Tomsk, 1999. P.10.

[150] Voskobitova L.A. Mechanism of realization of judicial power through criminal proceedings: author's abstract. dis. ... Doctor of Law. Moscow, 2004. P.30.

[151] Umarova M.A. Judicial review mechanism: general theoretical study: author's abstract. dis. ... candidate of legal sciences. Grozny, 2018. - P.11.

[152] Makhorkin I.L. Powers of the court and their implementation at the stage of preliminary investigation in criminal proceedings in Russia: diss. ... candidate of legal sciences. Moscow, 2009. P.9.

[153] Ibid. P.78.

We cannot agree with the given definition, since the court's means of influencing the participants in the proceedings by means of the performance of actions and the adoption of procedural decisions from a substantive point of view are nothing more than the powers of the court to perform and adopt them. Thus, in our opinion, the concept of powers and the mechanism for their implementation are mistakenly identified. For the same reason, criminal procedural functions as powers of a general nature and the limits of powers also cannot be elements of the mechanism for their implementation.

S.F. Shumilin devoted his dissertation research to the mechanism of implementation of the investigator's powers. Despite the fact that our research is devoted to the competence of the court, the scientist's position is important for us from the point of view of determining the essential features of the mechanism of implementation of the powers of an authoritative participant in criminal proceedings. Thus, S.F. Shumilin defines the mechanism of implementation of the investigator's powers as " a dynamic system controlled by the psyche of the investigator, where each of the structural elements that form it performs certain functions to translate the prescriptions of legal norms on the extent of possible and proper behavior into the criminal procedural actions of the investigator, in each case of obtaining information that determines the implementation of a certain power of the investigator" [154]. The author distinguishes three elements of the mechanism of implementation of the investigator's powers: information that determines the criminal procedural activity of the investigator; professional legal consciousness of the investigator; legal norms that contain instructions to the investigator regarding the manner of his actions, as well as legal provisions formulated in decisions of the Constitutional Court of the Russian Federation and the Plenum of the Supreme Court of the Russian Federation[155].

E.A. Ovchinnikova, noting that each judicial authority must be accompanied by means of implementation, forming the corresponding mechanism, indicates that the mechanism for implementing the procedural powers of the court (judge) consists of a set

[154] Shumilin S.F. Theoretical foundations and applied problems of the mechanism for implementing the investigator's powers in criminal proceedings: author's abstract. diss. ... Doctor of Law. Voronezh, 2010. P.12.
[155] Ibid. P.21.

of criminal procedural rules that determine: the content of the procedural authority; the rules for its implementation (implementation procedure); the requirements imposed on the results of implementation. The author calls the legal positions of the Constitutional Court of the Russian Federation a separate element of the mechanism for implementing powers. At the same time, the author attributes the explanations of the Supreme Court of the Russian Federation, professional legal consciousness, and established legal practice to the factors that have a significant impact on the mechanism for implementing powers, but are not part of it[156].

We agree with the presented positions in the part where the mechanism for implementing powers in any case includes legal norms regulating the content and scope of powers of the authority, since in the absence of clear regulatory framework, powers become “dead” and unable to be implemented. This conclusion, as applied to the present study, is also confirmed by the fact that the court, having fairly broad powers to participate in the process of proof during the implementation of judicial review, in the overwhelming majority of cases does not implement these powers, since there is no specific regulatory framework for their content and scope, that is, there is no mechanism for their implementation. The formalism allowed by the court in the implementation of its control function is also noted in the scientific literature, while it is noted that this activity is often only imitated by the court[157].

We should also agree with researchers who understand the mechanism for implementing judicial power or judicial control as a dynamically changing sequence of actions, which, in our opinion, should be considered as the procedure in which the totality of the court’s powers, which constitute the essence of its competence, are implemented.

Thus, the mechanism for implementing the court's competence in exercising judicial review at pre-trial stages of criminal proceedings is a system of procedural actions of the court, consisting of successive stages, for the application of criminal procedural

[156] Ovchinnikova E.A. Competence and powers of the court (judge) in Russian criminal proceedings: dis. ... candidate of legal sciences. Krasnodar, 2020. P.19, 109, 112.
[157] See, for example: Maslennikova L.N. Factors determining the development of criminal proceedings in Russia // Criminal justice: the connection of times: Selected materials of the international scientific conference, St. Petersburg, October 6-8, 2010. Moscow, 2012. P. 79.

rules that establish the content and scope of its competence to exercise judicial review at pre-trial stages of criminal proceedings.

The elements of the mechanism for implementing the court's competence at the pre-trial stages of criminal proceedings are the norms of criminal procedural law that establish the content and scope of the court's competence to exercise judicial control at the pre-trial stages of criminal proceedings, as well as a system of procedural actions of the court (procedure) consisting of successive stages, in which these norms are implemented.

§3. Competence of the court and types of judicial control

In science, various types of judicial review are distinguished, their classifications are proposed, the analysis of which is important from the point of view of determining whether the court has general competence, realized in various types of judicial review, or whether each type has its own competence of the court. In the scientific literature, attempts have also been made to distinguish between the general and special competence of the court[158].

It should be noted that different authors use different concepts: "types", "forms", "directions" of judicial control activities of the court. Some researchers separate these concepts, filling each of them with its own content. In particular, O. O. Avakov defines the types of judicial control depending on the stage of the proceedings (judicial control in pre-trial proceedings, in the court of first instance, etc.), and the forms - depending on the procedure for exercising control powers[159].

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[158] For example, E.A. Ovchinnikova draws attention to the existence of general and special procedural competence of the court in the administration of justice in general: general competence is understood as "a set of issues that determine the purpose of the court (judge) in modern society and the state", general competence is defined by the Constitution of the Russian Federation; special competence is understood as "a separate, independent, legal, multi-level structure of theoretical and practical significance that determines a set of issues subject to resolution by a specific court", this competence is based on the delimitation of issues of jurisdiction between the links of the judicial system within the framework of one form of legal proceedings and can have several levels, it is subdivided into competence in the consideration of a case on the merits, in the implementation of judicial review, in the review of a court decision in higher courts, etc. (see: Ovchinnikova E.A. Competence and powers of the court (judge) in Russian criminal proceedings: author's abstract of dis. ... candidate of legal sciences. Krasnodar, 2020. Pp. 17-18).

[159] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.98.

In our opinion, these discrepancies are largely terminological in nature. We will use the concepts given as synonyms.

I.V. Chepurnaya identifies the following forms of judicial review of the restriction of constitutional rights of citizens in pre-trial proceedings: judicial review of the legality and validity of the application of procedural coercion measures; judicial review of the legality and validity of investigative actions; judicial review of the legality and validity of actions (inaction) and decisions of preliminary investigation bodies and the prosecutor's office[160].

A.A. Endoltseva comes to the conclusion about a reasonable unification of judicial review procedures, consisting in the allocation of three judicial review procedures according to the degree of regulation, concerning the selection of preventive measures, the consideration of complaints and the consideration of petitions for the performance of investigative actions (Articles 108, 125, 165 of the Criminal Procedure Code of the Russian Federation), to which other norms of the Criminal Procedure Code of the Russian Federation refer as the main (basic) procedures[161].

A similar approach to identifying the three main forms of judicial review is followed by E.E. Korobkova [162], I.L. Makhorkin [163], A.D. Nazarov [164], I.R. Khromenkov[165] and other scientists. These types of judicial review are divided into subtypes in science[166].

I.Yu. Tarichko calls the above forms "traditional (classical) forms" of judicial review, to which the author also includes the review of court decisions made in the process of implementing the judicial review function and the consideration by the court of complaints against the refusal to reinstate a missed deadline for filing a complaint.

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[160] Chepurnaya I.V. Judicial review in pre-trial criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2005. P.8.
[161] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... candidate of legal sciences. M., 2023. P. 74.
[162] Korobkova E.E. Correlation of functions of judicial control and resolution of criminal case in the activities of the court // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2012. No. 6. P. 97.
[163] Makhorkin I.S. Powers of the court and their implementation at the stage of preliminary investigation in criminal proceedings in Russia: diss. ... candidate of legal sciences. Moscow, 2009. P.10.
[164] Nazarov A.D. Investigative and judicial errors and the criminal procedural mechanism for their elimination: conceptual foundations: diss. ... Doctor of Law. St. Petersburg, 2017. P. 14, 162, 182, 186.
[165] Khromenkov I.R. Ensuring legal interests by the court in the pre-trial stages of Russian criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Moscow, 2022. P.14.
[166] See, for example: Umyarova R.R. Judicial control over the legality and validity of investigative actions in criminal proceedings in Russia: law, doctrine and practice: diss. ... candidate of legal sciences. Nizhny Novgorod, 2024. P. 11.

I.Yu. Tarichko singles out as an independent "special, autonomous form of judicial review - control of the quality of evidence", which is implemented at all stages of criminal proceedings and consists of the verification and evaluation by the court of the evidence provided from the standpoint of relevance and admissibility, reasonable probability (with the exception of the implementation of this function when resolving a criminal case on the merits, when the court is obliged to evaluate the evidence presented from the standpoint of reliability in full), as well as sufficiency for making both intermediate and final decisions on the case[167].

In our opinion, the allocation of this special form of judicial review cannot be justified, since the verification and evaluation of evidence in itself is not the goal or subject of judicial review, it is a means without which judicial review activity is impossible in principle. Control of the quality of evidence is essentially the court's authority to participate in the process of proof, that is, an element of the court's competence in implementing its control function.

The above types of judicial review activities of the court are not limited to them. Thus, N.G. Muratova adheres to the position of multifunctionality of judicial activities in the implementation of judicial review and, in addition to those indicated, identifies the following types of judicial review: consideration by the court of a protocol drawn up by an official authorized to carry out criminal prosecution in connection with the failure of participants in criminal proceedings to fulfill their duties (in accordance with Article 118 of the Criminal Procedure Code of the Russian Federation); resolution by the court of motions in accordance with Article 119 of the Criminal Procedure Code of the Russian Federation; issuance of an opinion on the presence or absence of elements of a crime in relation to certain categories of persons (Part 3 of Article 448 of the Criminal Procedure Code of the Russian Federation); resolution of the issue of the legality of the decision to extradite a person (Article 463 of the Criminal Procedure Code of the Russian Federation). At the same time, consideration of motions for the performance of investigative actions in accordance with Article 165 of the Criminal Procedure Code of

[167] Tarichko I. Yu. The function of judicial review in Russian criminal proceedings: author's abstract. dis. … candidate of legal sciences. Omsk, 2004. Pp. 8-9.

the Russian Federation and subsequent verification of their legality in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation are defined by N.G. Muratova as two independent types of judicial review[168].

One of the most comprehensive studies of the types of judicial review was conducted by S.V. Burmagin, who proposed the concept of the unity of criminal justice and the differentiation of criminal proceedings and classified the latter as the following types: the main criminal proceedings and their derivatives - judicial review, judicial execution and judicial rehabilitation proceedings[169].

S.V. Burmagin identifies the following types of judicial review proceedings, dividing them into 4 groups according to the criterion of differences in the procedural forms in which they are implemented:

- having their own procedural form that is adequate to the subject and nature of a particular type of judicial review (consideration by the court of petitions for the selection and extension of the period of validity of preventive measures, petitions in accordance with Parts 2-4 of Article 165 of the Criminal Procedure Code of the Russian Federation, as well as complaints in accordance with Articles 125, 125.1 of the Criminal Procedure Code of the Russian Federation);

- endowed with their own procedure, which in some cases is insufficiently developed (extension by the court of the term of the seizure of property imposed in accordance with Article 115.1 of the Criminal Procedure Code of the Russian Federation, imposition by the court of a monetary penalty in accordance with Article 118 of the Criminal Procedure Code of the Russian Federation, verification of the legality of an investigative action taken in urgent cases in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, consideration of the issue of cancellation of a decision to terminate a criminal case in accordance with Article 214.1 of the Criminal Procedure Code of the Russian Federation, consideration of an appeal

[168] Muratova N.G. Multifunctionality of judicial review in criminal proceedings // Criminal proceedings. 2006. No. 1. P. 32-33.
[169] Burmagin S.V. Conceptual foundations of the unity of criminal justice and differentiation of judicial proceedings: dis. Doctor of Law. Volgograd, 2022. P.28.

against a decision on extradition in accordance with Article 463 of the Criminal Procedure Code of the Russian Federation);

- borrowing one of the above-mentioned procedural forms (petitions for seizure of property, placement of the accused in a psychiatric hospital - are considered in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation; a petition for the transfer of a person held in custody and suffering from a mental illness to a psychiatric hospital - is considered in accordance with Article 108 of the Criminal Procedure Code of the Russian Federation; a petition to limit the time the accused spends familiarizing himself with the case materials - is considered in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation);

- formally not having a legally established procedure and carried out in the manner established on the basis of judicial practice (temporary suspension of the accused from office in accordance with Article 114 of the Criminal Procedure Code of the Russian Federation, the issuance by the court of an opinion on the presence or absence of signs of a crime in the actions of an official in accordance with Article 448 of the Criminal Procedure Code of the Russian Federation)[170].

In the science of criminal procedure, not all scholars agree with the attribution of the above-described types of judicial activity at pre-trial stages of the process to judicial review, defining some of them as judicial permission, judicial sanction, judicial review or judicial restriction.

In particular, E.A. Adilshaev attributes to judicial review only the consideration by the court of complaints against decisions and actions of officials conducting criminal prosecution. The author attributes other classical types of judicial review to judicial sanctioning, which, in his opinion, has all the necessary features of an independent type of criminal procedural proceedings, the specificity of which allows it to be classified as a group of special proceedings. E.A. Adilshaev points out that the court itself does not carry

[170] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.261-262.

out the relevant measures; it actually sanctions (permits) their production, but does not control their legality and validity[171].

A.N. Ryzhikh also attributes to judicial review only the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, however, he calls only the resolution of petitions for investigative actions sanctioning. The author considers the application of procedural coercion measures as an independent form of court activity at pre-trial stages of criminal proceedings. The criterion for delimiting the powers of the court in these forms are the specifics of the procedural exercise of these powers, the nature of the legal relations that arise, the subject composition, and the essence of the decisions taken as a result of their implementation[172].

In turn, S. V. Burmagin criticizes the allocation of judicial sanctioning as an independent type of criminal procedural activity. Thus, speaking about the preceding preventive statutory control, the author notes that the authoritative expression of the will of the prosecuting authority to intrude in a certain way into the sphere of human rights, expressed in the resolution, is the direct subject of judicial control by the court and is verified by the court from the point of view of the legality of both the intrusion itself and the proposed methods of its implementation[173].

O. O. Avakov also criticizes judicial authorization as an independent area of court activity at pre-trial stages of criminal proceedings [174]. At the same time, the scientist divides this activity into judicial control and judicial authorization, attributing to the former the consideration of complaints and petitions in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation and Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, and to the latter - the consideration of petitions for the application of procedural coercion measures, for permission to carry out investigative actions, etc.[175]

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[171] Adilshaev E.A. Judicial sanctioning in criminal proceedings in Russia: author's abstract. dis. … candidate of legal sciences. Izhevsk, 2011. P.9, 16.
[172] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Ekaterinburg, 2008. Pp. 7-8, 92.
[173] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.272.
[174] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.62-63, 158-159.
[175] Ibid. P.13-14.

The author's position is not indisputable. For example, by classifying the court's selection of a preventive measure as a permit activity rather than a control activity, O. O. Avakov believes that it is unacceptable for a preventive measure to be cancelled not by the court but by an official[176], which, in our opinion, would, on the contrary, be more in favor of the control rather than the permit nature of the court's powers. In addition, assigning powers to cancel a selected preventive measure only to the court, rather than to an official of the preliminary investigation body, would turn the court into a criminal prosecution body and would be in conflict with the principle of adversarial proceedings. The court controls the legality and validity of the restriction of the constitutional rights of an individual rather than their expansion, which is reasonably attributed to the powers of officials conducting criminal prosecution and does not require the intervention of the court.

K.A. Arzamasceva and A.S. Karetnikov also do not classify the court's activity in deciding on a preventive measure and on the performance of individual investigative actions as judicial sanctioning, since "the court does not sanction the decision of the investigator, the inquiry officer, but makes its decision in the form of a separate procedural document" [177]. At the same time, the authors deny this activity of the court in its control nature, since it lacks the features of an activity called control, and the subject of control itself is absent[178].

In developing this thesis, K.A. Arzamasceva and A.S. Karetnikov provide original arguments: "in these situations, the court has to control not the investigator, but its own actions (self-control), since it, and not the investigator, bears responsibility for the decision made"; "the petition gives rise to a criminal procedural legal relationship between the investigator and the court, obliging the court to consider and resolve the essence of this petition. In essence, these relations are of the same nature as the relations that arise when a defense attorney files a petition with the investigator. But does the investigator, by considering and resolving the petition, thereby exercise control over the

[176] Ibid. P.151, 156.
[177] Arzamasceva K.A., Karetnikov A.S. Is the court’s activity in reviewing and resolving petitions of officials of preliminary investigation bodies judicial review? // Russian Justice. 2010. No. 4. P. 68.
[178] Ibid.

activities of the defense attorney? The answer to this question is obvious. And the court in such situations does not exercise control over the activities of the investigator, because the petition of the investigator, like that of the defense attorney, is not an object of control, but a reason for the beginning of the criminal procedural activity provided for by law, consisting in its consideration and resolution" [179].

We cannot agree with this argumentation, since the petitions filed by officials and other participants in criminal proceedings, although they have a number of common features, have different legal natures, are considered in different procedures, are regulated by different provisions of criminal procedure legislation, and the grounds and consequences of their filing are different.

Activities in considering petitions from officials to select and extend the term of preventive measures, according to K.A. Arzamasceva and A.S. Karetnikov, correspond to the concept of "justice" [180].

We also cannot agree with this position, since it deprives the said activity of its inherent characteristics and leads to its confusion with the activity of the court in considering criminal cases on the merits. The said activity is, in our opinion, a form of administration of justice, but does not exhaust it.

In science, there are other approaches to defining the activities of the court at the pre-trial stages of criminal proceedings. For example, I.R. Dochia points out that it is more correct to call the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation a judicial review, rather than judicial control. However, the researcher notes that these terms are synonyms and do not differ in essence[181].

N.V. Kosterina attributes to judicial control at pre-trial stages of the process only the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the consideration of notifications of officials in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian

[179] Ibid. P.67 .
[180] Ibid. P.68.
[181] Dochiya I.R. Modern problems of the institute of judicial review of complaints against actions (inaction) and decisions of officials of preliminary investigation bodies, the prosecutor: author's abstract. diss. ... candidate of legal sciences. Moscow, 2009. P.11, 18.

Federation and the verification of the legality of detention. The author attributes the selection of preventive measures, the issuance of permits for the performance of investigative actions and other procedural actions of the court to "judicial restriction of the constitutional rights and freedoms of citizens in pre-trial proceedings" [182].

The views of scientists regarding the types of criminal procedural activity of the court at the pre-trial stages of criminal proceedings are not exhausted by the above positions. In many ways, the differences in approaches are based on the difference in terminology (the court checks, permits, controls, sanctions).

In our opinion, the opinions of those authors who call various types of judicial activity at pre-trial stages of criminal proceedings judicial review cannot be considered erroneous. The court exercises control over the restriction of constitutional rights of the individual. With regard to the consideration of complaints of participants in criminal proceedings, the court controls (verifies) the legality and validity of the restriction of constitutional rights of the individual by the relevant decision, action or inaction of an official; with regard to the consideration of petitions of officials - the presence or absence of grounds for such a restriction, given in the resolution on the initiation of the relevant petition. The procedural will of the official, agreed upon with the head of the investigative body or the prosecutor, is already expressed in such a resolution, and the meaning of the additional judicial stage, the presence of which prevents the direct implementation of this will, lies precisely in the control by an independent court over the need for its implementation. This is why the court checks both the decision to initiate the relevant petition and the materials attached to it, and also controls the authorities involved in the proceedings from the point of view of the compliance of their procedural will with constitutionally significant values.

The unity of the essence of various types of judicial activity at the pre-trial stages of criminal proceedings (judicial control) will largely predetermine the unity of the court’s competence to implement them.

[182] Kosterina N.V. Judicial review at pre-trial stages of criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Volgograd, 2005. P.9.

In science, various classifications of types of judicial review are proposed. In particular, S.V. Burmagin divides judicial review into preceding (preliminary) and subsequent (according to the criterion of the relationship between the time of conducting a judicial review and the moment of the controlled procedural act), preventive and restorative (according to the method of protecting protected rights), statutory (mandatory) and optional or optional (according to the criterion of mandatory conduct)[183].

V.I. Bezryadin[184], L.A. Voskobitova[185], S.V. Romanov[186] also divide judicial review into preliminary and subsequent. S.V. Romanov also distinguishes between necessary (all types of preliminary review belong to it) and optional (implemented at the initiative of the participants in the process) judicial review[187].

N.V. Kosterina divides judicial control over the preliminary investigation into parallel and subsequent, attributing to the former the implementation by the court of its powers in accordance with Article 125 and Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, as well as the verification of the legality of detention, and to the latter - the verification of the grounds for bringing to trial and the verification of evidence in the trial[188].

N.N. Kovtun proposes the concepts of preventive and restorative judicial review[189]. N.A. Kolokolov uses the concepts of preventive and subsequent urgent judicial review[190]. K.B. Kalinovsky distinguishes subsequent and previous judicial review[191]. Other researchers classify judicial review as prospective (preliminary) and retrospective (subsequent)[192].

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[183] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.261-262.
[184] Criminal procedural law (criminal procedure): textbook / edited by E.K. Kutuev. 2nd edition, revised and enlarged. St. Petersburg, 2019. Pp. 233-234.
[185] Voskobitova L.A. Mechanism for the implementation of judicial power through criminal proceedings: author's abstract. dis. ... Doctor of Law. Moscow, 2004. P.31.
[186] Course of criminal procedure / edited by L.V.Golovko. 2nd ed., corrected. M., 2017. P.270.
[187] Ibid. P.270.
[188] Kosterina N.V. Judicial review at pre-trial stages of criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Volgograd, 2005. P.9.
[189] Kovtun N.N., Yartsev R.V. Judicial review of the legality and validity of actions and decisions of officials conducting criminal proceedings in Russia (Chapter 16 of the Criminal Procedure Code of the Russian Federation). 2nd ed. Nizhny Novgorod, 2008. Page 9.
[190] Judicial review in criminal proceedings: a textbook / edited by N.A. Kolokolov. 2nd ed. Moscow, 2013. Pp. 24-25
[191] Criminal Procedure: Textbook for Universities / Smirnov A.V., Kalinovsky K.B. 6th ed., revised. Moscow, 2015. P.413.
[192] Criminal Procedure Law of the Russian Federation. Textbook / edited by P.A. Lupinskaya. 2nd edition, revised and enlarged. Moscow, 2009. Pp. 106-108.

It is obvious that this issue is more terminological than substantive, and therefore, for the purposes of this study, when applying the criterion of time (moment) of implementation of control, we will use the concepts of preliminary and subsequent judicial control.

In scientific literature, a mixed form is also distinguished, combining features of both preliminary and subsequent judicial review. In particular, I.R. Khromenkov points out that in this form, the term of criminal procedural coercion measures is extended, since the judge, on the one hand, finds out from the person conducting the criminal case what actions were committed in the past, and, on the other hand, the volume of investigative and procedural actions planned for the future[193].

K.B. Kalinovsky proposes to divide preliminary judicial review into two procedures: a judicial procedure with the right of participation in the court session of interested persons (suspect, accused, defense attorney, prosecutor) and a judicial procedure that does not provide for the participation of interested persons, except for the prosecutor, investigator and inquiry officer (Article 165 of the Criminal Procedure Code of the Russian Federation)[194].

V.M. Petrovets identifies four types of judicial review at the initial stages of criminal proceedings: judicial review in the form of an open adversarial process, in the form of a closed adversarial process, in the form of an open non-adversarial process, and in the form of a closed non-adversarial process[195].

Uses the presence of adversarial proceedings as a classification criterion and A.A. Endoltseva. The author also proposes classifications of judicial review procedures by the subject of judicial review, by the sequence of its implementation, by the degree of regulation of the procedural order, by the subject of initiation of the procedure, by the possibility of appealing a court decision made within the framework of the judicial review procedure[196].

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[193] Khromenkov I.R. Ensuring legal interests by the court in the pre-trial stages of Russian criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Moscow, 2022. P.15 .

[194] Criminal Procedure: Textbook for Universities / Smirnov A.V., Kalinovsky K.B. 6th ed., revised. Moscow, 2015. P.413.

[195] Petrovets V.M. Forms and limits of court resolution of issues in pre-trial proceedings in Russian criminal proceedings: diss. ... candidate of legal sciences. Tyumen, 2007. P.122.

[196] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... Cand. of legal sciences. Moscow, 2023. Pp. 14-15.

A.A. Ustinov classifies the types of criminal procedural activities of the court at the pre-trial stages of criminal proceedings depending on the level of restriction of the rights and freedoms of participants in criminal proceedings and the degree of argumentation of the court decisions, classifying the issue of a preventive measure as the most restrictive of rights[197].

According to some researchers, individual types of judicial review are part of more general, mixed classifications. For example, S.V. Rudakova proposes a classification of pre-trial forms of criminal procedural appeal, highlighting as its independent elements, including limited judicial appeal (in particular, in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation), secondary judicial appeal (appealing against judicial decisions made in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation), and subsequent judicial appeal (appealing against judicial decisions issued based on the results of consideration of petitions of the investigator and inquiry officer)[198].

An analysis of the above positions allows us to conclude that the main classification of judicial review, which most scholars agree with, is its division into preliminary and subsequent. At the same time, law enforcement practice shows the ambiguity of classifying various judicial review proceedings into these types. For example, we are talking about such a type of judicial review as deciding on the extension of the term of a preventive measure.

Thus, the Criminal Procedure Code of the Russian Federation does not provide for the court's powers to verify the legality of a person's detention by an official in urgent cases. Likewise, the court's competence does not include the powers to retrospectively extend the term of this preventive measure.

N.A. Kolokolov, who attributes the decision on the measure of restraint to operational preventive judicial review, notes that the essence of operational judicial review is expressed in the fact that the subject of management (the court of the relevant

[197] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. Pp. 53-54.
[198] Rudakova S.V. Criminal procedural appeal and its system in domestic pre-trial proceedings: dis. ... Doctor of Law. Krasnodar, 2023. P.25-26.

instance) promptly carries out a check of how the controlled object (the preliminary investigation body, the prosecutor, the lower court) complies with the requirements and instructions of the law[199], from which it also follows that a retrospective check of the legality of keeping a person in custody is unthinkable from the point of view of such a feature of preliminary judicial review as its timeliness.

However, there are cases in judicial practice of making decisions by which the courts give a retrospective nature to orders to extend the period of detention. In particular, the Third Cassation Court of General Jurisdiction in case No. 77-954/2021, having overturned on 18.05.2021 the decision of the district court of 29.10.2020 to extend the period of detention of K., transferred the material on the investigator's motion for a new consideration to the court of first instance, indicating at the same time that it does not choose a preventive measure for K. for the period necessary for a new consideration of the investigator's motion, "since K. is currently being held in custody on the basis of the decision of the judge of the Smolninsky District Court of St. Petersburg of 28.04.2021"[200].

Thus, the legal force of the decision of 28.04.2021 was extended to the period preceding it (from 29.10.2020 to 28.04.2021), thereby the classic type of preliminary judicial review was actually endowed by the court with the legal nature of subsequent review.

Such cases are not isolated; the question of the constitutionality of the accused being in custody in the conditions of the interruption of the term of this preventive measure was the subject of assessment by the Constitutional Court of the Russian Federation[201]. This problem is discussed in more detail in the article by the author of this study[202].

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[199] Kolokolov N.A. Methodology for conducting the main judicial control actions at the stage of preliminary investigation. 2nd ed., revised and enlarged. Moscow, 2015. Part 1. Pp. 67-68.

[200] Cassation ruling of the Third Cassation Court of General Jurisdiction dated 18.05.2021 in case No. 77-954/2021 // archive of the Smolninsky District Court of St. Petersburg.

[201] See, for example: Ruling of the Constitutional Court of the Russian Federation dated May 27, 2021 No. 891-O “On the refusal to accept for consideration the complaint of citizen Anton Viktorovich Erokhin regarding the violation of his constitutional rights by Articles 109 and 255 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

[202] Lukianov S.S. Some issues of the competence of the court in exercising judicial control over the extension of the term of the preventive measure in the form of detention // Scientific School of Criminal Procedure and Forensic Science of St. Petersburg State University: Proceedings of the XIII International Conference, June 24-25, 2021 / edited by N.P. Kirillova, V.D. Pristanskov, N.G. Stoyko, V.Yu. Niamov. M., 2022. Part 2. Pp. 101-106.

Nevertheless, it can be considered established in science that various types of judicial review are classified as preliminary or subsequent review. Subsequent judicial review is carried out, in particular, when the court considers complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation and when verifying the legality of investigative actions associated with the restriction of constitutional rights of an individual, carried out in urgent cases, in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation. Obtaining judicial permission to carry out the said investigative actions in other cases (Article 165 of the Criminal Procedure Code of the Russian Federation) and deciding on the selection and extension of the term of preventive measures refers to preliminary judicial review.

The division of judicial review, common in science, into that carried out both in an adversarial procedure and without the participation of the defense (we are talking, first of all, about the court's consideration of petitions for permission to carry out investigative actions in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation), in our opinion, does not affect the essence of the court's competence in the implementation of these types of review.

Thus, in the event that after the search has actually been conducted, the higher courts cancel the decision to permit its conduct with the transfer of the material for a new judicial review[203], the defense has the right to participate in the new review, since the secrecy of the search has already been disclosed. Thus, the classic non-adversarial form of judicial review begins to be implemented in the adversarial procedure. At the same time, there is no change in the competence of the court, since the subject of judicial review, its goals and objectives as prerequisites for its formation remain unchanged. It does not follow from the differences in the circle of participants in judicial review proceedings that the competence of the court itself changes.

[203] See, for example: cassation ruling of the Fifth Cassation Court of General Jurisdiction dated 11.06.2020 in case No. 77-337/2020 // RLS "Consultant Plus"; appellate ruling of the Moscow City Court dated 23.03.2021 in case No. 10-4625/2021 // RLS "Consultant Plus".

In scientific literature, the opinion is expressed about the need to unify the legal regulation of the institution of judicial review at the pre-trial stages of criminal proceedings.

Thus, N.G. Muratova notes that the formulation of a single principle of judicial review in criminal proceedings will allow the practical implementation of constitutional principles of protecting the rights and interests of an individual in pre-trial proceedings, as well as in higher courts. For these purposes, N.G. Muratova proposes to supplement the Criminal Procedure Code of the Russian Federation with a separate article 8.1 "Judicial review in criminal cases" [204]. S.V. Burmagin adheres to a similar approach, agreeing with the need to introduce general rules (a separate section) into the Criminal Procedure Code of the Russian Federation that reflect the basic principles and principles of judicial review activities and establish conditions and rules for their use that are generally significant for all judicial review proceedings[205].

E. Yu. Likhacheva proposes to leave in Articles 108, 109, 165 and 125 of the Criminal Procedure Code of the Russian Federation only those provisions that regulate the activities of officials in initiating relevant petitions before the court and preparing the necessary materials on complaints, while the provisions devoted to the court's activities in considering them, the author proposes to place in Part 3 of the Criminal Procedure Code of the Russian Federation[206]. O. O. Avakov points out that for judicial review activities, general approaches to determining judicial powers when considering incoming appeals should be preserved[207].

N.N. Kovtun notes: “Each of the named forms of judicial review is, first of all, united by the unity of the subject and limits of judicial review; the unity of its procedure, which, even if it differs in particulars, nevertheless remains, in essence, a single form of administration of justice, a form of resolving a social and legal dispute (conflict) of the parties through judicial procedure and a generally binding judicial act, which acts as an

[204] Muratova N.G. The system of judicial review in criminal proceedings: issues of theory, legislative regulation and practice: dis. doctor of law. Ekaterinburg, 2004. P.114-115.
[205] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.27.
[206] Likhacheva E.Yu. The role of justice in pre-trial proceedings in criminal cases: author's abstract. dis. ... candidate of legal sciences. Saratov, 2005. P.9.
[207] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.13.

act of justice. The particularities of one or another form of control, implemented at the pre-trial stage, objectively manifest themselves only in the features of the procedural form of their implementation provided by the legislator, designed to most optimally ensure the tasks facing it, ensuring the socially significant goals of control and justice in general"[208].

One should agree with such approaches, since judicial review as a function of the judiciary is one of the forms of administration of justice, therefore, like any procedural function, it must have a single nature that determines its content.

The existence of various types of judicial review at pre-trial stages of criminal proceedings, in our opinion, not only does not exclude, but also presupposes their unity, which is subordinated to the general goal of the said institution, which consists in protecting the constitutional rights of participants in criminal proceedings. The unity of the nature of various types of judicial activity at pre-trial stages of criminal proceedings (judicial review) predetermines the unity of the court's competence to implement it.

Thus, with regard to various types of judicial review, the court has a general, uniform competence.

§4. The relationship between the competence of the court in exercising judicial control and the exclusive competence of the court resolving the criminal case on the merits

The functions of judicial review and resolution of a criminal case on its merits, as we have noted, are two independent functions of the court within the framework of the administration of justice, which also means a difference in the competence of the court in their implementation.

As I.Yu. Chebotareva correctly notes, one of the most difficult aspects of the court's activities is the requirement to exercise judicial review in such a way as to exclude the possibility of prejudging issues that may subsequently become the subject of judicial

[208] Kovtun N.N., Yartsev R.V. Judicial control over the legality and validity of actions and decisions of officials conducting criminal proceedings in Russia (Chapter 16 of the Criminal Procedure Code of the Russian Federation). 2nd ed. Nizhny Novgorod, 2008. Page 13.

proceedings on the merits of a criminal case[209]. Therefore, it is important to correctly define the limits of judicial review activities.

As such limits, A.V. Solodilov identifies the functional (subject) limit (it is aimed at preventing the mixing of procedural functions), the limit of the exercise of powers by the court (it is aimed at preventing the transformation of judicial control into the management of the preliminary investigation) and the limit of the unity of the criminal process (it is aimed at preventing the violation of the established system of stages of the criminal process)[210].

These limits of judicial review also influence the determination of the limits of the court's competence to implement it. Thus, the court should not interfere with the exclusive competence of the court resolving the criminal case on the merits, as well as with the exclusive competence of the preliminary investigation bodies. At the same time, since judicial review, according to some scholars, is subsidiary in nature in relation to the resolution of the criminal case, its limits, first of all, should be determined by the exclusive competence of the court considering the case on the merits. The exclusive nature of this competence is determined not by all the powers of the court that it implements at the judicial stages of the criminal process, but only by those that can be implemented exclusively at these stages, which is consistent with the opinion of V.V. Gorban that the powers of the court are not strictly divided into powers ensuring the implementation of justice, judicial review, since the same powers can ensure the implementation of several functions simultaneously[211], which is difficult to disagree with.

In our opinion, the court's powers to exercise the main types of judicial review are, for the most part, not exclusive in relation to the powers of the court considering the criminal case on the merits. As in the pre-trial stages of the process, during the trial the

[209] Chebotareva I.Yu. Criminal procedural function of control in the hierarchical system of other competing functions carried out by officials of state bodies in pre-trial proceedings: author's abstract. dis. ... candidate of legal sciences. Ekaterinburg, 2016. P.26.
[210] Solodilov A.V. Judicial control over the conduct of investigative actions and decisions of the prosecutor and investigative bodies restricting the constitutional rights and freedoms of citizens in criminal proceedings in Russia: diss. ... candidate of legal sciences. Tomsk, 1999. P. 81.
[211] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2008. P.12.

court is also authorized to select and extend the term of the preventive measure (Article 255 of the Criminal Procedure Code of the Russian Federation).

The court may also recognize the investigator's actions (inaction) and decisions as illegal and unfounded during the trial. For example, in the final decision on the case, the court may come to the conclusion that inadmissible methods of investigation were used, that the decision to initiate a criminal case was illegal or unfounded, and so on. The court may also make interim decisions that evaluate the investigator's actions (inaction) and decisions. For example, when considering a preventive measure, the court may evaluate the legality of the decision to declare the accused wanted, and when deciding on the participation of a specific defense attorney in the case, it may evaluate the legality of the investigator's decision to challenge him.

Moreover, according to paragraph 4 of Part 1 of Article 228 of the Criminal Procedure Code of the Russian Federation, the judge must determine whether the complaints filed are subject to satisfaction in a received criminal case, and according to Part 3 of Article 236 of the Criminal Procedure Code of the Russian Federation, the decision taken based on the results of the preliminary hearing must reflect the results of the consideration of the filed motions and complaints filed. Thus, as follows from the systematic interpretation of the above provisions, the court has the right to consider complaints filed in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation at the preliminary hearing, but the proceedings on which were terminated due to the criminal case being sent to court. Such decisions are made in practice[212].

Decisions made by the court in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation may also be taken in the course of a criminal case. For example, the court may recognize an investigative action as illegal, recognize that there were no grounds for authorizing the investigative action, or exclude its results from the evidence in the case. This position is consistent with the explanations of the

[212] See, for example: the ruling of the Smolninsky District Court of St. Petersburg dated 16.04.24 on criminal case No. 1-135/24, which at a preliminary hearing considered a complaint previously filed in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation against the investigator’s ruling on the recusal of the defense attorney; the recusal was found to be illegal // archive of the Smolninsky District Court of St. Petersburg.

Plenum of the Supreme Court of the Russian Federation, according to which the presence in the case materials of a court ruling on authorizing the investigative action or a ruling on its legality does not exempt the public prosecutor from the obligation to refute the arguments of the defense regarding the inadmissibility of evidence obtained during the said investigative action, if they are presented at the court hearing, and the court from the obligation to verify the circumstances of its conduct and make a reasoned decision on the motion filed by the defense[213].

Temporary suspension of the accused from office, as indicated by the Constitutional Court of the Russian Federation, is possible not only at the stage of preliminary investigation, but also at the stage of trial[214]. The wording of Part 2 of Article 29 of the Criminal Procedure Code of the Russian Federation, which contains a list of decisions that the court is authorized to make " including during pre-trial proceedings ", also indicates that both temporary suspension from office and, for example, seizure of property is permissible during the consideration of a criminal case on the merits.

Thus, most of the judicial review powers of the court can be exercised at the trial stages of criminal proceedings.

It is necessary to determine the essence of the exclusive competence of the court considering the criminal case on the merits.

According to Part 1 of Article 49 of the Constitution of the Russian Federation, everyone accused of committing a crime is considered innocent until his guilt is proven in accordance with the procedure provided for by federal law and established by a court verdict that has entered into legal force.

Clause 3.1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation" states that the following actions (inactions) and decisions "the verification of

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[213] Clause 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2017 No. 51 “On the practice of applying legislation when considering criminal cases in the court of first instance (general procedure for legal proceedings)” // RLS “Consultant Plus” .

[214] Ruling of the Constitutional Court of the Russian Federation dated 20.11.2014 No. 2544-O “On the refusal to accept for consideration the complaint of citizen Vladimir Nikolaevich Bychenko regarding the violation of his constitutional rights by the provisions of Article 114 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

the legality and validity of which falls within the exclusive competence of the court considering the criminal case on the merits" are not subject to appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation: refusal of an investigator and inquiry officer to carry out procedural actions to collect and verify evidence; refusal of an investigator and inquiry officer to file a motion with the court to terminate a criminal case or criminal prosecution and to assign a criminal-law measure to a person in the form of a judicial fine; decisions of an investigator, inquiry officer to bring a person as an accused, to appoint an expert examination, etc.

The distinction proposed by the Supreme Court of the Russian Federation does not concern competence itself, but rather pertains to the subject matter of jurisdiction, which is limited for judicial review.

Clauses 15 and 19 of the cited resolution of the Plenum of the Supreme Court of the Russian Federation also indicate that when considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the judge does not have the right to draw conclusions about the proven or unproven nature of guilt, and does not have the right to enter into discussions of issues regarding the guilt of a person.

A similar provision is contained in the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 "On the practice of applying the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions" devoted to another type of judicial review[215]. The court has no right to enter into a discussion of the issue of the guilt of a person (clause 2), the decision must not contain formulations about the guilt of a person (clause 29).

Thus, the main criterion for delimiting the competence of the court in the exercise of judicial review and in resolving a criminal case is the decision on the guilt of a specific person in committing a crime, which falls within the exclusive competence of the court considering the case on the merits. All cognitive activity of the court at this stage, including the collection, verification and evaluation of evidence, is aimed at obtaining an

[215] Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 “On the practice of applying by courts the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions” // RLS “Consultant Plus”.

answer to this question. The results of the evaluation of evidence must be given in the verdict (Articles 305, 307 of the Criminal Procedure Code of the Russian Federation).

At the same time, deciding the issue of guilt is not the only exclusive power of the court. According to paragraph 1 of Article 29 of the Criminal Procedure Code of the Russian Federation, only the court is authorized to apply compulsory medical measures to a person, compulsory educational measures, and also to decide to terminate a criminal case or criminal prosecution with the appointment of another criminal-legal measure in the form of a judicial fine.

E.A. Ovchinnikova points out that the competence of the court in the judicial stages of criminal proceedings includes the 4 specified groups of issues, and in pre-trial stages – issues on the legality of limiting the constitutional rights of participants in criminal proceedings[216]. The application of compulsory educational measures, as well as other measures of a criminal-legal nature in the form of a judicial fine, is also possible at pre-trial stages of criminal proceedings, but their application is not judicial control[217].

The differences in judicial competence in the exercise of judicial review and in resolving the case on its merits are determined by the court's authority to answer the questions raised. When considering a criminal case on its merits, the court also verifies the legality and validity of the investigative and other procedural actions taken during the preliminary investigation, the legality and validity of limiting the procedural rights of the participants in pre-trial proceedings, but such verification is carried out insofar as it serves the purpose of resolving the main issue - the issue of guilt, as well as issues of applying compulsory medical measures, educational influence, and the imposition of a judicial fine. This is the key difference between the two competences.

Thus, the differences in the goals, objectives and subject of judicial activity, which are the prerequisites for the formation of the court’s competence, also determine the differences in the competence of the court exercising judicial review and considering the case on the merits.

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[216] Ovchinnikova E.A. Competence and powers of the court (judge) in Russian criminal proceedings: dis. ... candidate of legal sciences. Krasnodar, 2020. P.103-104.

[217] See, for example: Kamatesov P.A. Release from criminal liability with the appointment of a judicial fine as a criminal procedural form: diss. ... candidate of legal sciences. St. Petersburg, 2022. P. 11.

Differences in competence are also seen in the types of decisions taken by the court. Thus, the final decisions for a criminal case will be a verdict (guilty or acquittal), a ruling on the application of compulsory medical measures, a ruling on the application of compulsory educational measures, a ruling on the termination of a criminal case on various grounds.

The final decisions on the merits of judicial review proceedings are decisions to satisfy or refuse to satisfy the filed complaint or the stated petition.

The delimitation of the court's competence includes the issue of the prejudicial effect of judicial decisions taken in judicial review proceedings. It follows from the provisions of Article 90 of the Criminal Procedure Code of the Russian Federation that interim judicial acts, including those taken in the course of judicial review, do not have a prejudicial effect. Thus, when considering a criminal case on the merits, the court may disagree with the conclusions reached by the court when exercising judicial review at the pre-trial stages of the criminal process.

The results of the author's survey of judges showed that the overwhelming majority of judges (75.4%) also believe that decisions taken in the course of judicial review do not have a prejudicial effect for the court considering the case on the merits. However, one fifth of the judicial corps (18%) answered positively to the question about the prejudicial effect of the judicial decisions under consideration. 5% of judges found it difficult to answer the question, 1.6% gave a different answer[218].

The scientific community expresses an opinion on the prejudicial significance of decisions taken during the consideration of judicial review proceedings. In particular, S.V. Nikitina notes that such decisions must have the property of prejudiciality in relation to the totality of evidence subject to examination in the trial on the merits of the brought charges. This means, the author notes, that the court of first instance, when considering a criminal case on the merits of the brought charges, may not enter into a discussion of the circumstances already established by the court at the pre-trial stages, and also recognize the information used in this process as procedurally sound. S.V. Nikitina also points out

[218]See Appendix No. 4.

that the conditions for the prejudiciality of court decisions taken at the pre-trial stages may be: the absence of obvious violations in obtaining information and complaints from the parties about violations committed by the court at the pre-trial stages; confirmation of the legality and validity of the court decision by a higher court (if the parties appealed it)[219].

We cannot agree with this position, since, in our opinion, it contradicts the imperative provisions of Article 90 of the Criminal Procedure Code of the Russian Federation. In addition, given that, according to S.V. Nikitina, the court does not carry out proof at the pre-trial stages of criminal proceedings, but carries out evidentiary activities based on both evidence and information of a different legal nature, that is, not presented in the form of evidence[220], giving the relevant court decisions a prejudicial value may lead to the law enforcement agency ignoring the imperative norms of the institution of proof and significantly reduce the procedural guarantees of the parties to criminal proceedings.

In our opinion, "the absence of obvious violations when receiving information and complaints from the parties about violations committed by the court in the pre-trial stages" also cannot be a condition for the prejudicial nature of a judicial act. Thus, the very nature of prejudiciality assumes that the circumstances established by the relevant judicial act are recognized "without additional verification" (Article 90 of the Criminal Procedure Code of the Russian Federation). In this regard, the court considering the case on the merits checking the presence or absence of violations committed by the court in the pre-trial stages of the process when receiving the sought fact contradicts the very nature of prejudiciality as a property of the legal force of a judicial act.

The performance of various tasks at the pre-trial and trial stages of criminal proceedings determines the authority of the court considering the criminal case on the merits to give a different assessment of the factual circumstances of the case compared to that contained in the decision taken as a result of the judicial review proceedings. The

[219] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P. 86.
[220] Ibid. P.17-18.

Constitutional Court of the Russian Federation directly indicates that, in particular, the provisions of Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation do not establish the prejudicial force of a court decision recognizing the search conducted as lawful and do not prevent verification of the admissibility of evidence obtained during the search and the legality of the actions of law enforcement officers in the procedures provided for by law[221].

The conclusion about the prejudicial nature of interim court decisions is also hindered by the presence of different levels (degrees) of proof during the change of stages of criminal proceedings, which is also supported by representatives of the scientific community.

N.A. Kolokolov, in particular, notes that judges in their decisions usually avoid analyzing evidence confirming the validity of taking a person into custody, assuming that this is related to the question of whether his guilt has been proven, which is the prerogative of the judicial authority considering the criminal case on the merits. This problem is not known to those law enforcement officers who recognize the existence of levels of proof of guilt sufficient for suspicion, accusation, detention, and conviction[222].

S.V. Burmagin draws attention to the existing differences in the required levels of knowledge (degree of proof) of the circumstances included in the subject of proof and serving as the basis for making judicial decisions in some types of judicial proceedings. The author notes that within the framework of the main proceedings for the consideration of a criminal case on the merits, it is necessary to achieve reliable knowledge of the circumstances of the case that does not allow for reasonable doubt, which would convince the judge of the correctness of the categorical conclusions made on the basis of this knowledge and encourage the only possible decision, while making decisions on the basis of circumstances, the possibility of the occurrence of which is expected in the future, which is typical for cases of preliminary judicial review (for example, proceedings under

[221] Definition of the Constitutional Court of the Russian Federation of 16.12.2008 No. 1076-O-P "On the complaints of citizens Arbuzova Elena Nikolaevna, Balanchukova Alexandra Vasilievna and others on the violation of their constitutional rights by parts three and five of Article 165 of the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".

[222] Judicial review in criminal proceedings: a textbook / edited by N.A. Kolokolov. 2nd ed. Moscow, 2013. P.391.

Articles 108 and 109, 165 of the Criminal Procedure Code of the Russian Federation), is allowed upon achieving probabilistic knowledge of them[223].

S.V. Burmagin makes this conclusion, first of all, with regard to circumstances, the essence of which is initially associated with the probability of their occurrence (for example, the possibility of the accused to escape - when considering petitions in accordance with Article 108 of the Criminal Procedure Code of the Russian Federation). However, the existence of various degrees of proof of circumstances presupposes, in our opinion, the achievement of probabilistic knowledge also in relation to facts that took place in retrospect.

A.A. Ustinov also points out the existence of different levels of proof of the factual circumstances of a criminal case, noting that the more significantly the most important rights and freedoms of persons involved in criminal procedural activity are affected, the higher should be the level of proof of the factual circumstances necessary for making a decision and the degree of validity of the court's conclusions[224]. For pre-trial proceedings, A.A. Ustinov proposes the following standards of proof: "reasonable suspicion", "sufficient grounds", "weighty conviction", which are listed in ascending order and should provide the court with the necessary level of confidence to make a legal decision[225].

The existence of different degrees (levels) of proof of the circumstances of a criminal case is recognized by E. Yu. Zamurueva[226], I. V. Kablukov (sufficiency of evidence can be preliminary or final)[227], M. I. Voronin (the level of knowledge about the factual circumstances relating to the incriminated crime, when deciding on a preventive measure, is presumptive)[228] and other researchers.

The existence of different levels of proof of the same circumstances of a criminal case is also confirmed by the use of the method of contradictio in contrarium ("by

[223] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.412-413.
[224] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. P. 58.
[225] Ibid. P.49.
[226] Zamurueva E.Yu. General conditions for the application of preventive measures in Russian criminal proceedings: diss. ... candidate of legal sciences. Orel, 2023. P. 105, 113.
[227] Kablukov I.V. Current issues of ensuring sufficiency of evidence and other data in criminal proceedings: diss. ... candidate of legal sciences. Chelyabinsk, 2023. P. 13.
[228] Proof and decision-making in adversarial criminal proceedings / ed. L.N. Maslennikova. Moscow, 2017. Pp.153-154.

contradiction"). Thus, if the level of proof is the same, then, for example, if the court refuses to choose a preventive measure for the accused on the grounds of unfounded suspicion of the involvement of this person in the crime committed, the investigator would not have the right to choose a more lenient preventive measure for the accused and would be obliged to terminate the criminal prosecution of such a person due to the disappearance of material grounds for his suspicion or accusation.

It is also unacceptable to attach a prejudicial value to decisions taken by way of judicial review because the court does not have the fullness of evidentiary information that it has when deciding the case on its merits. It would be wrong to assume that, given the limited amount of case materials presented to the court and the limited effect of certain principles of criminal procedure at its pre-trial stages, the court establishes factual circumstances with the same degree of certainty as when considering the case on its merits, when the court has at its disposal all the materials of the completed criminal case investigation and the court has the fullness of procedural means to verify them. The very fact of limiting the volume of materials presented to the court emphasizes the preliminary nature of its conclusions, including on the assessment of evidence.

For the same reason, the recognition by higher courts of judicial decisions issued in the course of judicial review as lawful and justified does not give such judicial decisions prejudicial force.

It should be noted that our position is that judicial acts adopted in the order of judicial review do not have a prejudicial effect only for the court that will consider the criminal case on the merits. The prejudicial effect of such decisions, for example, for civil or arbitration proceedings is beyond the scope of this study[229].

The difference between the exclusive competence of the court considering a criminal case on its merits and the competence of the court exercising judicial review is also manifested in the different mechanisms of their implementation, that is, in the differentiation of both the normative and legal regulation of the court's powers and the

[229] This issue is addressed, in particular, in the dissertation research of S.V. Nikitina (see: Nikitina S.V. Evidentiary activity of the court in making procedural decisions in pre-trial proceedings in criminal cases: diss. ... Cand. of legal sciences. Ulyanovsk, 2022. P. 37).

procedures for implementing the relevant legal norms. These procedures differ in content, range of participants, features of the operation of the principles of criminal procedure and general conditions of judicial proceedings.

To sum up, it should be noted that the scope and limits of the court’s competence in judicial review proceedings are determined by its relationship with the exclusive competence of the court resolving the criminal case on the merits.

The distinctive features of the court's competence in the exercise of judicial review are:

- the specifics of the subject of judicial review;
- features of the goals and objectives of the procedural function carried out by the court;
- the level (degree) of proof of the circumstances included in the subject of judicial review;
- types of decisions taken and their prejudicial nature;
- features of the mechanism for implementing competence.

Chapter 3. Contents of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure

§1. General issues of the court's competence to participate in the process of proof

One of the complex issues that arise when determining the nature and scope of the court's powers in judicial review proceedings is the question of the essence and content of the court's activities to establish the circumstances that are the subject of judicial review. It is necessary to determine whether this activity is criminal procedural evidence or whether it is another cognitive activity of the court, what are the features of this activity and its limits, what procedural means does the court have at its disposal to carry it out.

The study of scientific views on the essence of the court's cognitive activity during pre-trial proceedings made it possible to identify three main approaches to resolving this issue.

The first approach is to evaluate the judicial control activity of the court as evidentiary. The second approach does not assume the evidentiary nature of judicial knowledge. The third (combined) approach is that the process of knowledge is carried out by the court both by means of proof and by other means.

According to S.V. Burmagin, the thesis on the possibility of the court making decisions outside the process of proof, that is, without establishing their factual basis, contradicts the law enforcement nature of court decisions and the normative-legal requirement of their validity (Article 7, 297 of the Criminal Procedure Code of the Russian Federation). The application of legal norms to an unknown, unexplored situation by the court is impossible; allowing this is nonsense[230].

As E.E. Korobkova notes, the court as an authority must be endowed with the unconditional authority to enter into the verification and assessment of the indictment evidence presented (by the initiator of the motion), to assess it for relevance, admissibility and sufficiency for resolving the dispute between the parties on the merits. Only on this

[230] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.506.

objective basis, the author notes, does the judge have the right to form a conclusion on the presence (absence) of legal and factual grounds for satisfying a particular motion filed with the court, on recognizing the action or decision of the criminal prosecution bodies appealed by the parties as lawful and justified[231].

I.V. Kablukov points out that the effective implementation of operational judicial review depends on the granting of powers to the judge to conduct the verification and evaluation of the evidence presented, when verifying and evaluating the materials presented to the court by the parties[232].

A.A. Ustinov notes that the process of individual judicial regulation during pre-trial proceedings includes the collection of evidence by the subjects of proof, their verification, examination and evaluation by the court, including the establishment of their relevance, admissibility, reliability and sufficiency[233].

The process of proof in the implementation of criminal procedural activities by the court during pre-trial proceedings, according to Ustinov A.A., has its own characteristic differences: by the subject of proof (which includes circumstances, the range of which is significantly narrowed taking into account the future consideration of the case on the merits, which is associated with the prohibitions to prejudge issues that may subsequently become the subject of judicial proceedings on the merits of the criminal case, to draw conclusions about the factual circumstances of the case, about the assessment of evidence and the qualification of the act), by the subjects of proof (which include a smaller number of persons whose participation in the trial itself is not mandatory), by the degree of activity of the court, deprived of its "active" powers to appoint expert examinations, call an expert for questioning and some others, as well as by the method of proof, taking into account the "truncated" judicial investigation[234].

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[231] Korobkova E.E. Correlation of functions of judicial control and resolution of criminal case in the activities of the court // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2012. No. 6. P. 99.
[232] Kablukov I.V. Current issues of ensuring sufficiency of evidence and other data in criminal proceedings: diss. ... Cand. of legal sciences. Chelyabinsk, 2023. P. 136.
[233] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... candidate of legal sciences. Moscow, 2022. Pp. 14-15.
[234] Ibid. P.56.

N.N. Kovtun[235], S.I. Koneva[236], E.Yu. Likhacheva[237], T.V. Khmelnitskaya[238] and other researchers point out that the court carries out cognitive activity at the pre-trial stages of criminal proceedings in the form of proof.

With regard to certain types of judicial review, the majority of scholars also take the position that the court carries out precisely evidentiary activities.

Thus, speaking about the court's consideration of petitions for preventive measures, N.P. Kirillova notes that without checking the validity of the investigator's petitions, the procedural decisions made by him, the actions taken, it is difficult for the court to make a lawful and reasoned decision. N.P. Kirillova points out that it is possible to confirm the validity of evidence of suspicion or accusation by assessing the evidence from the point of view of its relevance, admissibility, reliability and sufficiency, while the court evaluates the evidence through the prism of its sufficiency to answer the questions: did a crime take place, is there evidence confirming the fact that it was committed by the person whose arrest is stated in the petition[239].

I.I. Sukhova proposes to supplement Article 97 of the Criminal Procedure Code of the Russian Federation with provisions that would stipulate that the grounds for choosing preventive measures must be confirmed exclusively by evidence[240]. M.I. Voronin[241], O.G. Ivanova[242], A.O. Mashovets[243], V.V. Rudich[244], A.R. Chikulina[245] and other authors share

[235] Kovtun N.N. Judicial review in criminal proceedings in Russia. Nizhny Novgorod, 2002. P.69.
[236] Koneva S.I. On the issue of judge's participation in proving during the implementation of judicial review during preliminary investigation // Russian judge. 2014. No. 4. P.24-25.
[237] Likhacheva E.Yu. The role of justice in pre-trial proceedings in criminal cases: author's abstract. dis. ... candidate of legal sciences. Saratov, 2005. P.10.
[238] Khmelnitskaya T.V. Problems of evidence formation during pre-trial proceedings in a criminal case: diss. ... candidate of legal sciences. Nizhny Novgorod, 2016. P.147-148.
[239] Kirillova N.P. Theoretical and practical problems of judicial review in Russian legislation // Criminal justice: the connection of times: Selected materials of the international scientific conference, St. Petersburg, October 6-8, 2010. Moscow, 2012. P.50-51.
[240] Sukhova I.I. Moral principles of the decision on the need to choose a preventive measure permitted only by a court decision: author's abstract. dis. ... candidate of legal sciences. Moscow, 2021. P. 14.
[241] Proof and decision-making in adversarial criminal proceedings / ed. L.N. Maslennikova. Moscow, 2017. P.160.
[242] Ivanova O.G. Criminal procedure proceedings for the court's selection of a preventive measure: criminal procedure form and features of proof: diss. ... candidate of legal sciences. Krasnoyarsk, 2019. P.17.
[243] Mashovets A. O. On obtaining judicial evidence within the framework of judicial review procedures during pre-trial proceedings // Legal Science and Law Enforcement Practice. 2015. No. 4. P. 113.
[244] Rudich V.V. Mechanism of application of preventive measures in Russian criminal proceedings: diss. ... Doctor of Law. Ekaterinburg, 2020. P.122-123.
[245] Chikulina A.R. Subject and limits of proof when the court decides on petitions for the selection of preventive measures: author's abstract. dis. ... candidate of legal sciences. Chelyabinsk, 2024. P. 11.

the opinion that when deciding on a preventive measure, the court carries out proof, including evaluating evidence.

T.A. Andryushchenko notes that when the court considers complaints from participants in criminal proceedings, the totality of available evidence is not as voluminous as at the stage of sentencing in a criminal case, but the rules of proof are absolutely identical[246]. E.R. Mirgorodskaya adheres to a similar approach[247].

According to A.P. Ryzhakov, without assessing the evidence at the stage of judicial review of the legality of the preliminary investigation, it is impossible to make any decision, including issuing a ruling based on the results of the consideration of the complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation[248]. N.P. Kirillova draws attention to the assessment of evidence as an element of proof when considering complaints against a ruling to terminate a criminal case[249], and I.Yu. Chebotareva draws attention to the assessment of evidence as an element of proof when considering complaints against a ruling to refuse to initiate a criminal case[250].

As A.N. Ryzhikh notes, the factual data on the basis of which the court makes a decision in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation can only be information obtained through procedural means, that is, evidence[251].

Supporters of the second approach to the essence of the court's cognitive activity note that it is not limited to proof.

In particular, E.A. Ovchinnikova points out that the use of the category "evidence" when describing the judicial review activities of the court is "more of a tribute to tradition,

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[246] Andryushchenko T.I. The court as a subject of proof in criminal proceedings: diss. ... candidate of legal sciences. Volgograd, 2012. P.111-112, 115.

[247] Mirgorodskaya E.R. Judicial procedure for considering complaints at the stage of initiating a criminal case: author's abstract. dis. ... candidate of legal sciences. Chelyabinsk, 2024. P.11.

[248] Ryzhakov A.P. Appealing to the court against decisions (actions, inactions) of an investigator (inquiry officer): commentary to the resolution of the Plenum of the Supreme Court of the Russian Federation of February 10, 2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation". Moscow, 2010. P. 144.

[249] Kirillova N.P. Determination of the competence of the court in the implementation of judicial review at the stage of preliminary investigation // Laws of Russia: experience, analysis, practice. 2016. No. 4. P. 38.

[250] Chebotareva I.Yu. Criminal procedural function of control in the hierarchical system of other competing functions carried out by officials of state bodies in pre-trial proceedings: author's abstract. dis. ... candidate of legal sciences. Ekaterinburg, 2016. Pp. 26-27.

[251] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Ekaterinburg, 2008. P.187.

a familiar vocabulary phrase, than reflecting the essence of the procedural activity of the judge within the framework of judicial review activities" [252]. The author believes that when implementing judicial review, the court can examine both evidence and factual data that do not have the status of evidence[253].

O. O. Avakov also believes that when implementing judicial review, as well as judicial-permitting activities, information in the form of evidence, as well as information not clothed in evidentiary form, is subject to investigation[254]. A. V. Piyuk allows for the possibility of making decisions in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation both on the basis of evidence and on the basis of "only operational data" [255].

S.V. Nikitina believes that the court does not carry out proving at the pre-trial stages of criminal proceedings, but may use evidence. Thus, distinguishing between the categories of "evidential activity in criminal proceedings" and "criminal procedural proving", the author notes that they are two criminal procedural forms of establishing by the court the circumstances necessary for making a decision. The differences are in the circle of authorized entities, in the sphere of implementation of each of them (in particular, in the stages of criminal proceedings), in content, in the procedure established by the current criminal procedural legislation[256].

By evidentiary activity of the court S.V. Nikitina understands a simplified criminal procedural form of implementation by the court of powers to establish circumstances necessary for making a lawful decision in pre-trial proceedings, based on the use of both procedural evidence and information of a different legal nature . For example, with regard to the decision on the measure of restraint, the establishment of the involvement of the accused in the crime under investigation, the correctness of the classification of the elements of the crime (the conclusion on which is of a preliminary nature) is permissible

[252] Ovchinnikova E.A. Competence and powers of the court (judge) in Russian criminal proceedings: dis. ... candidate of legal sciences. Krasnodar, 2020. P.124.
[253] Ibid. P.131, 138.
[254] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.120, 149.
[255] Piyuk A.V. The role of the court in collecting evidence in a criminal case at the stage of preliminary investigation and during the consideration of the case in the court of first instance: diss. ... candidate of legal sciences. Tomsk, 2004. P. 125.
[256] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.17.

only on the basis of evidence, while the circumstances that are the basis for choosing a measure of restraint in accordance with the provisions of Part 1 of Article 97 of the Criminal Procedure Code of the Russian Federation, paragraphs 1-4 of Part 1 of Article 108 of the Criminal Procedure Code of the Russian Federation, as well as circumstances characterizing the personality of the accused, can be established on the basis of information that does not have the form of procedural evidence or in conjunction with evidence[257].

According to D.S. Merlakov, the court is not at all a subject conducting pre-trial proceedings; it does not perform evidentiary activities at this stage of the process. As part of the control, it checks the submitted materials for their compliance with the requirements established by the criminal procedure law[258].

V. Yu. Stelmakh believes that, for example, when considering materials in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, " the presumption of the validity of the investigator's petition to carry out an investigative action should be applied, implying that a refusal to carry it out can only take place upon the establishment of clear and indisputable facts indicating the absence of grounds for carrying out criminal prosecution" [259], which, in our opinion, actually means a rejection of the court's cognitive activity as such.

Thus, the question of the essence of the court's cognitive activity at the pre-trial stages of criminal proceedings has not been resolved in science. At the same time, most researchers stand on the position of the court's implementation of either criminal-procedural proof, or both proof and knowledge of facts not clothed in this form.

The results of our survey and generalization of judicial practice showed that judges do not share the position of the majority of researchers.

Thus, two thirds of judges (68.9%) indicated that when exercising judicial review, the court should not evaluate the evidence presented by the parties in its decision, since their evaluation occurs only when considering the criminal case on the merits. The same

[257] Ibid. P.18-19.
[258] Merlakov D.S. Criminal procedural competence of entities conducting pre-trial proceedings: dis. ... candidate of legal sciences. Omsk, 2023. P. 54.
[259] Stelmakh V.Yu. The system of evidence in the pre-trial stages of criminal proceedings: problems of theory, regulation and practice: dis. ... Doctor of Law. Ekaterinburg, 2021. P.178.

approach was shared by almost two thirds of investigators (63.6%), one third of prosecutors (34%) and one quarter of lawyers (26%)[260].

A summary of judicial practice on the main types of judicial review also showed that in all but one case, the courts did not indicate in their decisions that they had assessed the evidence presented[261]. Only in one of the studied judicial acts, adopted in accordance with Article 125 of the Code of Criminal Procedure of the Russian Federation, was it formally stated: "having assessed all the evidence available in the case materials, the court comes to the conclusion that there are no grounds for satisfying the applicant's complaint"[262]. At the same time, the content of the assessment of the evidence was not provided in the decision.

Thus, the cognitive activity of the court at the pre-trial stages of criminal proceedings is not perceived as evidentiary by many law enforcement officials.

At the same time, the court often does not evaluate the circumstances that serve as the basis for restricting the constitutional rights and freedoms of citizens outside the process of proof. Thus, as a summary of judicial practice has shown, only in one case of choosing a preventive measure in the form of detention for a suspect/accused did the court evaluate in its decision the validity of the suspicion of the person's involvement in the crime committed, disclosing the essence of all evidence confirming it: "the suspicion of N.V.A. in committing a crime is well-founded and is confirmed by the testimony of witness FULL NAME, who pointed to N.V.A. as a person involved in committing the crime" [263].

In 56.2% of cases of choosing a preventive measure, the courts provided in the decision only a list of evidence confirming the validity of the suspicion without disclosing the essence of all of them. In 40.4% of cases, the courts formally assessed the validity of the suspicion, noting that it was confirmed by the materials presented by the official,

[260] See Appendices No. 1-4.
[261] See Appendices No. 5-7.
[262] Resolution of the Butyrsky District Court of Moscow dated 13.12.2022 based on material No. 3/12-0134/2022 (see Appendix No. 9).
[263] Resolution of the Butyrsky District Court of Moscow dated 26.01.2023 based on material No. 3/1-0022/2023 (see Appendix No. 8).

while the content of such materials was not disclosed in the court decisions. In 2.7% of cases, the courts did not assess the validity of the suspicion at all[264].

When recognizing a search conducted in urgent cases as lawful, the courts assessed the factual circumstances indicating the urgency of this investigative action only in 40.1% of cases[265]. For example, according to material No. 3/3-2/2020, the Yelizovsky District Court of the Kamchatka Territory indicated that "from the explanations of the victim FULL NAME and witnesses, it follows that at the specified time, S., who was drinking alcoholic beverages near the scene of the crime on that day and had no alibi during the crime, could have been involved in the commission of this crime <…>. S. was detained near the house where he lives and in order to exclude the possibility for him to hide traces of the crime, including the stolen property, a lawful and reasoned decision was made on the presence of urgent circumstances for conducting a search without a court decision"[266].

In the remaining cases, the courts either formally indicated that there were circumstances indicating the need for an immediate search (30.6%), or did not at all assess the urgent nature of the investigative action taken (29.3%)[267].

While recognizing the search as legal, the courts assessed the presence of grounds for its implementation in only 1.3% of cases, providing specific evidence that supported these grounds[268]. For example, according to material No. 3/3-78/2020, the Kansk City Court of the Krasnoyarsk Territory substantiated the presence of grounds for the search by "the testimony of FULL NAME4, who, during interrogation on July 28, 2020, explained that the stolen TV was in her home at the address…" [269].

In the remaining cases, the courts either indicated what caused the need to conduct a search, but without referring to specific evidence (36.9%), or formally referred to the presence or absence of grounds for conducting it without disclosing their content (36.3%). In 25.5% of cases, the courts did not assess the presence of grounds for conducting a search at all[270].

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[264] See Appendix No. 5.
[265] See Appendix No. 7.
[266] See Appendix No. 10.
[267] See Appendix No. 7.
[268] Ibid.
[269] See Appendix No. 10.
[270] See Appendix No. 7.

With regard to the court's assessment of the legality of the search conducted, the courts checked compliance with the norms of the Criminal Procedure Code of the Russian Federation during its conduct only in 42% of cases of recognizing the search as legal. In 24.9% of cases, judicial decisions contained only a formal indication that the search was conducted in accordance with the requirements of the Criminal Procedure Code of the Russian Federation. A third of judicial decisions (33.1%) did not contain an assessment of compliance with the requirements of the law during the conduct of this investigative action[271].

When considering complaints under Article 125 of the Criminal Procedure Code of the Russian Federation, the courts, as a rule, provided in their decisions an assessment of the legality/validity of the contested decision or action (inaction). However, in 6.8% of judicial acts adopted on the merits of the complaints filed, the corresponding assessment was absent[272].

At the same time, the courts, as a rule, refused to consider the arguments of the participants in the court hearing about the absence of the required properties of the presented evidence (materials). For example, in the ruling of 24.11.2023, adopted on the basis of material No. 3/10-74/2023, the Frunzensky District Court of St. Petersburg indicated that since "in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the court does not have the right to prejudge issues that may subsequently become the subject of judicial proceedings on the merits of a criminal case, in particular, to draw conclusions about the validity of the charge, the assessment of evidence, <...> the court does not take into account the applicant's arguments about the irrelevance and inadmissibility of the documents submitted to the court hearing received from the Estonian Customs" [273].

It should be noted that when implementing judicial review, the courts in their decisions either use the concept of evidence, but do not indicate their assessment[274], or

[271] Ibid.
[272] See Appendix No. 6.
[273] See Appendix No. 9.
[274] See, for example: ruling of the Nevsky District Court of St. Petersburg dated 14.12.2021 based on material No. 3/1-481/2021 on choosing a preventive measure (Appendix No. 8); appellate ruling of the St. Petersburg City Court on the cancellation of the ruling of the Nevsky District Court issued in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation based on material No. 3/10-258/2022 (Appendix No. 9); ruling of the Smolninsky District Court

indicate the assessment of the materials of judicial review proceedings, but do not call the latter evidence[275], or do not use both of the above concepts, indicating that the court examined, checked or studied the materials presented[276] (none of the above is evidence within the meaning of Chapter 11 of the Criminal Procedure Code of the Russian Federation).

One of the reasons for this state of affairs, in our opinion, is the lack of legislative regulation of the court's cognitive activity in the exercise of judicial control at the pre-trial stages of criminal proceedings, and of an appropriate mechanism for its implementation, which deprives the court itself of the opportunity to determine the scope and limits of its own powers.

The Criminal Procedure Code of the Russian Federation, in relation to the consideration by the court of petitions for the selection and extension of the period of validity of preventive measures, uses the concept of "materials" that are attached to the decision to initiate the relevant petition (Part 3 of Article 108 of the Criminal Procedure Code of the Russian Federation). The concept of "evidence" is used only in relation to the grounds for extending the period of detention (Clause 3, Part 7, Article 108 of the Criminal Procedure Code of the Russian Federation). The legislator also guides the law enforcement officer to the fact that the court's decision must be made on the basis of specific, factual circumstances (Part 1, 3.1 of Article 108 of the Criminal Procedure Code of the Russian Federation).

Articles 125 and 165 of the Criminal Procedure Code of the Russian Federation do not contain requirements regarding the form of information examined by the court, or regarding the essence of its cognitive activity.

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of St. Petersburg dated 28.04.2021 based on material No. 3/2-177/2021 on extending the period of detention // archive of the Smolninsky District Court of St. Petersburg.

[275] See, for example: the ruling of the Pushkinsky District Court of St. Petersburg dated 08.11.2023 based on material No. 3/1-138/2023 on the selection of a preventive measure (Appendix No. 8); the ruling of the Nevsky District Court of St. Petersburg dated 03.11.2022, issued in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation based on material No. 3/10-257/2022 (Appendix No. 9).

[276] See, for example: Resolution of the Frunzensky District Court of St. Petersburg dated 15.11.2023 based on material No. 3/3-133/2023 on recognizing the search as lawful (Appendix No. 10); Resolution of the Pushkinsky District Court of St. Petersburg dated 06.11.2023 based on material No. 3/1-137/2023 on choosing a preventive measure (Appendix No. 8); Resolution of the Nevsky District Court of St. Petersburg, issued in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation based on material No. 3/10-256/2022 (Appendix No. 9).

Part 2 of Article 125.1 of the Criminal Procedure Code of the Russian Federation indicates that the court carries out an examination of evidence in accordance with the rules of Chapter 37 of the Criminal Procedure Code of the Russian Federation; however, this type of judicial activity, in our opinion, is not judicial review in the sense under consideration and, from a functional point of view, is closer to a special form of resolving a criminal case on the merits.

The fact that not all information examined by the court within the framework of judicial review procedures is presented in evidentiary form may also be indicated by the amendments introduced by Federal Law No. 608-FZ of 29.12.2022[277] to Article 389.13 of the Criminal Procedure Code of the Russian Federation, which regulates the procedure for considering a criminal case by an appellate court. Thus, this federal law differentiated the procedures for the appellate review of interim and final court decisions. It was established that, in the case of complaints against final court decisions, the court shall consider motions to examine evidence that was examined by the court of first instance, as well as new evidence (Part 4.2 of Article 389.13 of the Criminal Procedure Code of the Russian Federation), however, in the case of complaints against interim court decisions (including those adopted by way of judicial review), the court shall consider motions to examine case materials and (or) additional materials submitted by the parties (Part 4.1 of Article 389.13 of the Criminal Procedure Code of the Russian Federation).

The use of different terms (evidence and materials) may lead courts to believe that interlocutory decisions may not be based on evidence.

Let us turn to the legal positions of the Plenum of the Supreme Court of the Russian Federation in relation to such an element of proof as the assessment of evidence, since it is the quintessence of all evidentiary activity, and its results are the basis for decisions made by the court.

Clause 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian

[277] Federal Law of 29.12.2022 No. 608-FZ "On Amendments to the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".

Federation" states that when considering complaints, the judge should not limit himself to establishing only whether officials have complied with the formal requirements of the law, but is obliged to verify the factual validity of the contested decision. At the same time, the judge does not have the right to prejudge issues that may subsequently become the subject of judicial proceedings on the merits of the criminal case, in particular, to draw conclusions about the validity of the charge, the assessment of evidence and the qualification of the act. Clause 15 of this Resolution of the Plenum of the Supreme Court of the Russian Federation stipulates that the court considers a complaint against a decision to terminate a criminal case without assessing the evidence available in the case.

Thus, the assessment of evidence, from the point of view of the Supreme Court of the Russian Federation, falls within the exclusive competence of the court considering the criminal case on the merits.

Courts, as a rule, interpret the above provisions literally and directly indicate in their decisions the impossibility of assessing evidence when considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation. Thus, in one of the complaints against a court ruling adopted in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the appellate court indicated that "in accordance with the current criminal procedure law, when checking the legality and validity of decisions and actions (inaction) of the investigator, the head of the investigative body, the judge does not have the right to draw conclusions about the factual circumstances of the case, the assessment of evidence and the qualification of the act" [278].

In another ruling, the cassation court indicated that when considering the complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, “the court of first instance does not have the right to assess the ‘admissibility of the said procedural documents as evidence’ (the explanations received from minors A. and Ya. on September 8, 2018), and even more so, on this basis, to conclude that the investigator’s decision to refuse to initiate a criminal case on September 10, 2018, adopted based on the

[278] And the appellate ruling of the Moscow City Court dated 06/09/2021 in case No. 10-10994/2021 // RLS "Consultant Plus".

results of the consideration of B.'s statement about the commission of a crime, and to cancel it, is illegal" [279].

At the same time, the resolutions of the Plenum of the Supreme Court of the Russian Federation, devoted to other types of judicial review, contain provisions that testify not only to the right, but also to the obligation of the court, when implementing its control functions, to evaluate evidence.

Thus, paragraph 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 19.12.2013 No. 41 "On the practice of applying the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions by the courts " states that when considering a petition for the selection of a preventive measure in the form of detention, the judge is obliged to check whether the petition and the materials attached to it contain specific information indicating the involvement of this particular person in the crime committed, and to evaluate this information in his decision. At the same time, the judge's failure to check and evaluate the validity of the suspicion of a person's involvement in the crime committed must be regarded as a material violation of the criminal procedure law (Part 4 of Article 7 of the Criminal Procedure Code of the Russian Federation), entailing the cancellation of the decision on the selection of a preventive measure.

It is necessary to stipulate what should be understood by suspicion in the given case. According to E.E. Korobkova, when deciding on a preventive measure, the court cannot distance itself from checking the validity of not only suspicion, but also the accusation[280]. While agreeing in essence with the expressed position, we note that the Plenum of the Supreme Court of the Russian Federation, discussing the issue of the validity of suspicion of a person's involvement in a committed crime, in our opinion, means suspicion not in the formal sense (Article 46 of the Criminal Procedure Code of the Russian Federation), but in the material sense, in which the concept of a suspect merges with the concept of an accused. The formal understanding of the concept of

[279] Resolution of the Presidium of the Court of the Jewish Autonomous Region dated September 12, 2019 No. 44U-36/2019 // RLS "Consultant Plus".
[280] Korobkova E.E. Correlation of functions of judicial control and resolution of criminal case in the activities of the court // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2012. No. 6. P. 99.

"suspicion" used by the Supreme Court of the Russian Federation would mean providing the suspect with greater procedural guarantees than the accused, which would contradict the principles of equality and ensuring the suspect and the accused the right to defense.

The cited resolution of the Plenum of the Supreme Court of the Russian Federation also contains the following provisions:

- when extending the period of detention at any stage of criminal proceedings, the courts must verify the presence at the time of consideration of this issue of the grounds provided for in Article 97 of the Criminal Procedure Code of the Russian Federation, which must be supported by reliable information and evidence (paragraph 21);

- decisions on choosing detention as a preventive measure and on extending the period of detention must indicate why a more lenient preventive measure cannot be applied to the person, provide the results of the examination in the court session of specific circumstances justifying the choice of this preventive measure or the extension of its validity, evidence confirming the presence of these circumstances, as well as the court's assessment of these circumstances and evidence with a statement of the reasons for the decision taken (paragraph 29).

The need to verify “actual circumstances,” “actual data,” “specific information,” “specific circumstances” when deciding on a preventive measure is also indicated in paragraphs 5, 7, 22, 35, 39, 49, 51.1 of the considered resolution of the Plenum of the Supreme Court of the Russian Federation.

Another resolution of the Plenum of the Supreme Court of the Russian Federation dated 01.06.2017 No. 19 “On the practice of considering by courts petitions for investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)” [281] contains the following provisions of interest to us:

[281] Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 "On the practice of considering petitions by courts for investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)" // RLS "Consultant Plus".

- when deciding a petition to carry out an investigative action, the judge is obliged to verify the presence of factual circumstances that serve as the basis for carrying out the investigative action specified in the petition (clause 12);

- based on the provisions of Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, both the legality of the decision of the investigator or inquiry officer to carry out an investigative action and their compliance with the norms of criminal procedure law during its conduct are subject to judicial review (clause 16).

The last clarification follows directly from the provisions of Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, according to which the recognition of an investigative action as illegal entails the recognition of all evidence obtained during its production as inadmissible.

Thus, in relation to the decision on the issue of a preventive measure and the granting of permission to carry out an investigative action, the Plenum of the Supreme Court of the Russian Federation points out the need to assess the factual circumstances and evidence that serve as the basis for making the relevant judicial decision.

However, the established judicial practice (including that summarized by the author of this study) shows that when implementing the above types of judicial review, the courts point out the impossibility of assessing evidence. For example, in one of the complaints against the ruling on recognizing the search as lawful in accordance with Part 5 of Article 165 of the Code of Criminal Procedure of the Russian Federation, the appellate court indicated that "the arguments in the appeals regarding the inadmissibility and unreliability of the evidence on the basis of which the investigator issued a ruling to conduct a search of a home in urgent cases do not call into question the court's conclusions set out in the contested ruling and cannot serve as grounds for its cancellation, since at the stage of the investigation of the case, the court has no right to assess evidence and prejudge other issues that may subsequently become the subject of judicial proceedings in the case" [282].

[282] Appellate ruling of the Moscow City Court dated March 17, 2022 in case No. 10-4078/2022 // RLS "Consultant Plus".

Similar conclusions are made by the courts when considering other judicial review proceedings[283].

As can be seen from the examples given, reference to the impossibility of assessing evidence is often used by courts as a pretext for evading the obligation to examine and assess the factual circumstances included in the subject of proof in a separate judicial review proceeding, regardless of its type. This approach by the courts significantly reduces the procedural guarantees of participants in criminal proceedings.

In our opinion, during pre-trial proceedings, the court's cognitive activity may be carried out exclusively in the form of criminal procedural proof in accordance with the general provisions on evidence and proving contained in Chapters 10 and 11 of the Criminal Procedure Code of the Russian Federation. At the same time, the court may not base its decisions on information that is not presented in evidentiary form, and is authorized to evaluate the evidence presented. This conclusion is supported by the following arguments.

Firstly, Chapters 10 and 11 of the Criminal Procedure Code of the Russian Federation, which regulate the essentially uniform criminal procedural proof, are located in its general part, and therefore extend their effect to both the judicial and pre-trial stages of criminal proceedings.

Secondly, it is unacceptable to distinguish between evidence and "factual data", "factual circumstances", "specific information" and "specific circumstances" referred to by the Plenum of the Supreme Court of the Russian Federation, since according to Article 74 of the Criminal Procedure Code of the Russian Federation, the said circumstances/information may exist only in the form of criminal procedural evidence. The Criminal Procedure Code of the Russian Federation does not establish any other form of knowledge of factual circumstances. In this regard, factual data not presented in evidentiary form cannot be used in the process of criminal procedural knowledge. The

[283] See, for example: the appellate ruling of the Voronezh Regional Court of 11.08.2022, issued on the appeal against the decision to select a preventive measure in the form of detention, in case No. 22K-2148/2022 // RLS "Consultant Plus"; the ruling of the Presidium of the St. Petersburg City Court of 19.07.2017, issued on the cassation appeal against the decision to extend the period of detention, in case No. 44u-79/2017 // RLS "Consultant Plus".

existence of parallel forms of evidentiary activity contradicts the unified nature of criminal procedural knowledge.

For this reason, the relevant provisions of the resolutions of the Plenum of the Supreme Court of the Russian Federation should be interpreted as obliging the court, when exercising judicial review at the pre-trial stages of criminal proceedings, to evaluate evidence specifically for the purpose of solving specific judicial review tasks.

Thirdly, in relation to the court's decision on the measure of restraint, the legislator makes demands on the results of operational-search activities examined by the court to be presented in the form of criminal-procedural evidence. Thus, according to Part 1 of Article 108 of the Criminal Procedure Code of the Russian Federation, the court's decision on the selection of a measure of restraint cannot be based on the results of operational-search activities presented in violation of the requirements of Article 89 of the Criminal Procedure Code of the Russian Federation.

In this regard, we cannot agree with S.V. Nikitina, who, as one of the arguments in favor of the existence of other forms of evidentiary activity, points out that "it is hardly possible to consider it correct to define as "proof" the use by the court of information obtained in an extra-procedural manner, for example, within the framework of operational search activities" [284].

Indeed, the results of operational investigative activities themselves are not evidence, but when presented in the manner prescribed by Article 89 of the Criminal Procedure Code of the Russian Federation, they become full-fledged evidence.

Fourthly, as we indicated above, the powers of the court to exercise the main types of judicial review are, for the most part, not exclusive in relation to the powers of the court considering the criminal case on the merits.

The prohibition on prejudging issues that may subsequently become the subject of judicial proceedings on the merits of a criminal case (validity of the charge, assessment of evidence, qualification of the act, etc.)[285] cannot be understood literally, since virtually

[284] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2021. P. 68.
[285] Clause 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".

any issues that the court decides in the order of judicial review may subsequently become the subject of judicial proceedings when considering the case on the merits. For example, the legality of the search, the validity of the suspicion/charge, the legality of the initiation of a criminal case, etc. are checked. This prohibition is directly related only to the implementation of the powers specified in Part 1 of Article 29 of the Criminal Procedure Code of the Russian Federation, and, first of all, to the power to decide on the guilt of a person in committing a crime. Otherwise, this prohibition should be understood through the prism of various degrees of proof of the circumstances of a criminal case in the dynamics of the change of its stages, that is, as a prohibition to make only final conclusions on the relevant issues.

Decisions made at pre-trial stages of criminal proceedings do not have a prejudicial effect, and the circumstances established by them may be re-evaluated during the consideration of the criminal case on the merits[286].

Thus, when the court carries out evidentiary activities during pre-trial proceedings, there is no intrusion into the exclusive competence of the court considering the criminal case on the merits.

Fifthly, the degree of restriction of the constitutional rights of an individual not related to the exercise by the court of the powers enshrined in Part 1 of Article 29 of the Criminal Procedure Code of the Russian Federation is the same regardless of the stage at which this restriction occurs. Thus, the consequences of taking the accused into custody (both legal and socio-psychological, measured by the intensity of the impact of this preventive measure on the psyche of the accused and on his temporarily severed social ties) are the same for him regardless of the stage of criminal proceedings at which this preventive measure is chosen.

From this point of view, providing defendants at the stage of preliminary investigation with lesser procedural guarantees by derogating from the need to confirm the circumstances that serve as the basis for choosing a preventive measure exclusively by evidence will place such defendants in a position that infringes their rights, which

[286] See also: Lukianov S.S. On the issue of judicial protection of the rights of the parties when they present evidence at the stage of preliminary investigation // Theory and practice of social development. 2021. No. 4 (158). P. 50.

cannot be recognized as consistent with the constitutional principle of equality. The essence of the court's cognitive activity on this issue at the stage of trial and at the pre-trial stages of criminal proceedings cannot differ.

The same logic applies to the limitation of other constitutional rights of an individual, for example, when considering a complaint against the removal of a defense attorney, when deciding the legality of an urgent search conducted at the defendant's home, etc. There are no grounds for limiting the defendant's ability to defend his position by those procedural means for which the law provides minimal guarantees of their epistemological reliability, i.e. evidence. A situation in which, depending on the stage of the criminal process, the issue of limiting the same right of a participant in criminal proceedings will be resolved differently is unacceptable.

The logic of those researchers who believe that the court, when exercising judicial review, can actually use "procedurally formless" means and, moreover, not evaluate them, inevitably leads to a situation in which, for example, the same set of materials may be sufficient for choosing a preventive measure at the pre-trial stage and insufficient at the trial stage of the criminal process. Thus, if information about the circumstances that serve as the basis for choosing a preventive measure are not presented in evidentiary form, are presented as the results of operational-search activities that are not legalized in accordance with Article 89 of the Criminal Procedure Code of the Russian Federation, and the court does not evaluate them, then it may consider such information sufficient for taking a person into custody, which is excluded during the trial. At the same time, uniform consequences of the decisions taken must be generated by uniform grounds.

In this regard, it is impossible to fully agree with the position of A.A. Ustinov, who asserts that proof during the court's consideration of the materials of a criminal case during pre-trial proceedings differs significantly (in terms of subject matter, limits, procedure and subjects of proof) from proof during the consideration of a criminal case on the merits, and is structurally and substantively separate from proof during the

adoption of final procedural decisions[287], since the essence of proof is invariable regardless of the stage of the criminal process.

Sixthly, the purposes of the assessment of evidence carried out by the court in the order of judicial review and when considering the case on the merits are different. Thus, when exercising judicial review at the pre-trial stages of criminal proceedings, the court evaluates certain evidence in order to verify the legality and validity of the restriction of the constitutional rights of citizens. When considering a criminal case on the merits, the court evaluates the evidence in order, first of all, to establish the guilt or innocence of a specific person in committing a crime (Article 299 of the Criminal Procedure Code of the Russian Federation)[288].

Seventhly, the existence of parallel forms of evidentiary activity creates artificial obstacles to the use of information obtained by the court during the exercise of judicial review in proving the main criminal case. Thus, facts established during judicial review may have evidentiary value when considering the case at the trial stage[289]. Depriving information about these facts of evidentiary form inevitably blocks the possibility of their use in judicial proceedings, during which only evidence can be used.

Eighthly, given that the procedural effect of decisions taken in the course of judicial review extends to the criminal case itself, then giving the court the opportunity to make such decisions outside the process of proof would mean influencing the fate of the criminal case in circumvention of the imperative requirements for the means of procedural knowledge of its circumstances.

Ninthly, the implementation of judicial review without assessing the evidence would indicate that the court can make a decision only on the basis of procedural documents submitted by the investigator, taking the information reflected in them on faith, without actually verifying the latter, which contradicts the principle of legality (Article 7 of the Criminal Procedure Code of the Russian Federation), according to which

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[287] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: dis. ... candidate of legal sciences. Moscow, 2022. P. 13.

[288] See also: Kirillova N.P. Procedural functions of professional participants in adversarial criminal proceedings. Monograph. St. Petersburg, 2007. P. 91.

[289] See, for example: Koneva S.I. Judicial interrogations in criminal proceedings: evidentiary value and procedure: diss. ... candidate of legal sciences. Nizhny Novgorod, 2013. P. 80.

any judicial acts must be justified and motivated, as well as the principles of independence of judges (Article 8.1 of the Criminal Procedure Code of the Russian Federation) and freedom to assess evidence (Article 17 of the Criminal Procedure Code of the Russian Federation).

In this regard, we cannot agree with the position of S.V. Nikitina, who indicates, with regard to the evidentiary activity of the court, the rejection of the forms of obtaining information in accordance with Chapter 37 of the Criminal Procedure Code of the Russian Federation, as well as the requirements of the motivation of the court decision and the need to issue it on the basis of admissible and relevant evidence. The author also notes that the internal conviction of the court, formed under the influence of a direct study of the presented materials, is the basis for ensuring the reliability of the information reported to the court, in relation to which a rebuttable presumption of their reliability must apply[290]. S.V. Rudakova points out that such a property of evidence as admissibility does not apply to information that serves as the basis for making a decision on the complaint of a participant in criminal proceedings. This is due, among other things, to the nature of the decision being made (interim)[291]. V.Yu. Stelmakh, in turn, points to the effect of the presumption of the validity of the investigator's petition for the performance of an investigative action[292].

In our opinion, the rejection of the requirements of the motivation of judicial acts, the relevance and admissibility of evidence, the introduction into judicial practice of the presumption of the reliability of information reported to the court, the presumption of the validity of the petition of an official will lead to the adoption by the courts of unfounded, unmotivated and arbitrary decisions based on internal voluntarism. All this contradicts the goals for which the institution of independent judicial review operates.

The next argument in favor of our position is based on an interesting observation by A.A. Ustinov, which consists in the fact that when the court evaluates evidence during

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[290] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... Cand. of legal sciences. Ulyanovsk, 2022. Pp. 18, 19, 117, 129.

[291] Rudakova S.V. Criminal procedural appeal and its system in domestic pre-trial proceedings: dis. ... Doctor of Law. Krasnodar, 2023. P.353.

[292] Stelmakh V.Yu. The system of evidence in the pre-trial stages of criminal proceedings: problems of theory, regulation and practice: dis. ... Doctor of Law. Ekaterinburg, 2021. P.178.

the consideration of complaints about an unjustified refusal to initiate a criminal case, about an illegal termination of criminal prosecution, the conclusions on the evaluation of evidence of other subjects of proof (investigator, inquiry officer) are checked. This indicates the interconnection of the elements of the evidence system at various levels of the procedure for the implementation of criminal procedural activity by the court during pre-trial proceedings[293].

In our opinion, A.A. Ustinov's remark goes beyond the examples he proposed and applies to all judicial review proceedings. Indeed, in various types of judicial review activities, the court is presented with the results of an already completed assessment of the evidence at the disposal of the official. Since these results can form the basis of a judicial act, the court must be able to express an independent opinion regarding these results, that is, to evaluate the evidence. For example, a ruling on bringing a person as an accused embodies the results of the investigator's assessment of "sufficient evidence providing grounds for accusing a person of committing a crime" (Part 1 of Article 171 of the Criminal Procedure Code of the Russian Federation). The court, exercising its authority to assess the validity of suspicion of a person's involvement in a crime, must be able to express an independent position on this evidence. Thus, the court evaluates not the ruling on bringing a person as an accused, but the evidence that formed its basis and that was presented in the materials of the judicial review proceedings, which serves the purposes of judicial review.

Eleventh, proof is carried out by the court, including at the stage of initiating a criminal case, when the court has at its disposal materials obtained in accordance with Article 144 of the Criminal Procedure Code of the Russian Federation.

In this regard, we cannot agree with the position of A.A. Ustinov, who allows the use, for example, when considering a complaint against a decision to refuse to initiate a criminal case, along with evidence, of other materials, “among which, at this stage of pre-

[293] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. P. 97.

trial proceedings, the evidence specified in Article 74 of the Criminal Procedure Code of the Russian Federation may not be present" [294].

Thus, explanations (obtained through the procedural process in accordance with Article 144 of the Criminal Procedure Code of the Russian Federation) used as means of establishing circumstances that serve as grounds for initiating a criminal case, for example, are evidence within the meaning of Article 74 of the Criminal Procedure Code of the Russian Federation (other documents). The non-use of explanations in the evidentiary process at the stage of preliminary investigation is not due to the fact that they are not evidence, but to the fact that, given the increasing degree of proof of the circumstances of the case in the dynamics of the change of its stages after the initiation of a criminal case, explanations cease to meet the degree of proof required for the relevant stage (preliminary investigation), and therefore, as a general rule, cannot be used in the process of proof.

Thus, regardless of the stage at which judicial review is carried out, the court learns the necessary range of circumstances using evidence only.

Twelfthly, when assessing evidence during judicial review, the court does not intrude into the exclusive competence of the preliminary investigation bodies, since such an assessment is carried out by the court not for the purpose of criminal prosecution, but for the purpose of ensuring the constitutional rights and freedoms of citizens. At the same time, the court acts under conditions of limited materials submitted to it, the volume of which, as a rule, is determined by the preliminary investigation body itself.

Thirteenth, some proponents of derogation from the rules of evidence in judicial review base their position on the fact that such derogation occurs in practice.

Often the court does base its decisions on information that is not presented in evidentiary form. Of course, S.V. Nikitina is right when she notes that the use of factual data that does not have the status of evidence is becoming increasingly widespread in criminal procedural activity[295]. However, a change in the practice of applying any legal

[294] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. Pp. 109-110.
[295] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P. 59.

institution cannot in itself serve as a scientific justification for a change in the approach to its essence. On the contrary, the problems that arise in the practice of judicial review indicate that, from the point of view of practical necessity, the court must carry out proof in order to resolve the tasks facing it.

It should be noted separately that the previously mentioned differentiation of the procedures for appealing final and interim judicial acts, proposed in Article 389.13 of the Criminal Procedure Code of the Russian Federation and formally assuming that in the first case the court examines evidence, and in the second - information not clothed in evidentiary form, cannot testify to the admissibility of the court's exercise of knowledge outside the process of proof, since the decision to choose a preventive measure, taken, for example, during the trial, is also interim, but it can be based solely on evidence. In this regard, a literal interpretation of the relevant provisions of Article 389.13 of the Criminal Procedure Code of the Russian Federation is erroneous and runs counter to the essence and purposes of judicial review.

An analysis of scientific points of view, current legislation and problems arising in practice allows us to come to the following conclusions.

The competence of the court at the pre-trial stages of criminal proceedings includes the authority to establish circumstances included in the subject of judicial review, exclusively by means of criminal procedural proof in accordance with the general provisions on evidence and proof contained in Chapters 10 and 11 of the Criminal Procedure Code of the Russian Federation. The court not only has the right, but is also obliged to evaluate the evidence presented, including its properties. Such an assessment is preliminary in nature and serves the purposes of specific judicial review proceedings. At the same time, there is no intrusion into the exclusive competence of the court resolving the criminal case on the merits, nor into the exclusive competence of the preliminary investigation body. Depriving the court of the authority to evaluate the evidence presented would completely disavow the meaning of the institution of judicial review.

The competence of the court in the process of proof is determined by the preliminary nature of the decisions taken, conditioned by the existence of various levels

(degrees) of proof during the succession of stages of the criminal process. Decisions taken based on the results of judicial review activities do not have a prejudicial value for the court resolving the criminal case on the merits.

The presented approach corresponds to the unity of the nature of judicial review and extends to any judicial review activity at the pre-trial stages of criminal proceedings.

§2. The scope and limits of the court's competence to participate in the process of proof

The problems of determining the scope and limits of the court's competence in the process of proving factual circumstances included in the subject of judicial review are debatable in the science of criminal procedure and are resolved in various ways in practical activities. This is due, among other things, to insufficient legal regulation of the activity of consideration and resolution of judicial review proceedings. It is necessary to determine the question of what procedural means the court has at its disposal when carrying out proof at the pre-trial stages of criminal proceedings and what are the limits of its competence.

According to the provisions of Articles 86 and 87 of the Criminal Procedure Code of the Russian Federation, such elements of proof as the collection and verification of evidence are implemented through the performance of investigative and other procedural actions.

One must agree with T.V. Khmelnitskaya, who notes that the current Criminal Procedure Code of the Russian Federation does not contain a list of procedural means used by the court and the parties to obtain and verify evidence in judicial review procedures; the law is also silent about the limits of proof [296].

Indeed, with regard to the stage of judicial proceedings, Chapter 37 of the Criminal Procedure Code of the Russian Federation regulates the limits of the court's competence,

[296] Khmelnitskaya T.V. Problems of evidence formation during pre-trial proceedings in a criminal case: diss. ... candidate of legal sciences. Nizhny Novgorod, 2016. P.147.

providing for a list of investigative and other procedural actions that the court has the right to perform. Judicial review is deprived of such regulation.

In science, there is no dispute about the fact that the court has the right to examine the materials presented to it, but the question of how they can be formed has not been resolved.

The scientific views of scholars who allow the court to carry out proof during judicial review on the scope of procedural means available to the court to establish the circumstances included in its subject matter are represented by two main positions. Some authors provide an approximate and optimal, in their opinion, list of investigative and other procedural actions available to the court, while others point to the possibility of the court to carry out actions provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation, applicable, as a rule, to the type of judicial review they are studying, without, in our opinion, sufficiently defining the limits of the court's evidentiary activity.

S.V. Rudakova notes that when considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the court has the right, for example, to inspect objects and question persons[297]. E.Yu. Likhacheva, with regard to the court's decision on a preventive measure[298], points out the need to enshrine in law the court's ability to interrogate witnesses. According to E.A. Ovchinnikova, in a court hearing conducted in accordance with Articles 108, 125, 125.1, 165 of the Criminal Procedure Code of the Russian Federation, individual judicial (investigative) actions may be carried out - interrogation, confrontation, disclosure of documents, presentation and inspection of objects, material evidence. The author considers this list to be optimal[299]. E.A. Ovchinnikova proposes to supplement the Criminal Procedure Code of the Russian Federation with a new Article 29.1 “Powers of a Judge in Pre-Trial Proceedings,” which would, among other things, establish the powers of the court to send requests to

[297] Rudakova S.V. Criminal procedural appeal and its system in domestic pre-trial proceedings: dis. ... Doctor of Law. Krasnodar, 2023. P.354.
[298] Likhacheva E.Yu. The role of justice in pre-trial proceedings in criminal cases: author's abstract. dis. ... candidate of legal sciences. Saratov, 2005. P.10.
[299] Ovchinnikova E.A. Competence and powers of the court (judge) in Russian criminal proceedings: dis. ... candidate of legal sciences. Krasnodar, 2020. P.137.

government bodies, organizations, and citizens to obtain documents and other materials necessary to establish the factual circumstances of complaints or petitions pending before it, and to order a forensic medical examination of a suspect or accused to determine the possibility of keeping him or her in custody[300].

I.L. Petrukhin points out that the judge must have the right to demand the provision of materials substantiating the petition, to interrogate as witnesses persons who confirm or refute it[301]. A.A. Ustinov notes that in the process of proving during pre-trial proceedings, the court is deprived of its "active" powers to appoint examinations, call an expert for questioning, and some others. At the same time, when considering the petition of an official to choose a preventive measure, the court is authorized to interrogate witnesses, including on circumstances characterizing the personality of the accused[302].

With regard to the simplified procedural form of evidentiary activity at the pre-trial stages of criminal proceedings, S.V. Nikitina points out the expediency of such procedures as questioning, explanations, hearings, and , at the discretion of the court or at the request of the participants in the court session, the possibility of performing a number of significant procedural actions provided for in the forms of the court session, such as interrogation, examination, inspection (of documents, objects). According to the author, invited persons who are able to provide the court with the necessary information are subject to questioning, explanations are given by the investigator, prosecutor, participants in the court session from the prosecution or defense side, presenting their arguments on the stated claims, a specialist and an expert are heard if they participate in the court session[303]. S.V. Nikitina notes that with regard to the consideration of complaints at the stage of initiation of a criminal case, as well as petitions in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, the court must be

[300] Ovchinnikova E.A. Competence of the court, judge in criminal proceedings: theoretical definition and normative consolidation // Gaps in Russian legislation. 2019. No. 7. P. 144.
[301] Petrukhin I.L. Judicial power: control over the investigation of crimes. Moscow, 2008. P.131-132.
[302] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: dis. ... Cand. of legal sciences. Moscow, 2022. P.56, 183.
[303] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... Cand. of legal sciences. Ulyanovsk, 2022. P.100, 125.

authorized to demand (request) objects, documents, other information carriers, including digital ones[304].

The possibility, in necessary cases, of requesting additional materials from the preliminary investigation body during the exercise of judicial review in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation is indicated by T.A. Andryushchenko[305], and in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation - by A.V. Piyuk[306]. O.O. Avakov proposes to provide for the possibility of requesting additional documents at the request of interested persons for consideration of a notification in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation[307].

The supporter of the second approach, O. Yu. Tsurluy, in relation to the consideration of complaints under Article 125 of the Criminal Procedure Code of the Russian Federation, notes that since the judicial investigation in this judicial review proceeding is subject to the general conditions of judicial proceedings, any judicial actions of an investigative nature provided for by the criminal procedure law may be carried out during the consideration of the complaint at the initiative of the court or at the request of the parties[308]. A similar position is held by Dzabiyev U.K., who proposes to supplement Article 108 of the Criminal Procedure Code of the Russian Federation with a provision that when checking the information provided by the preliminary investigation body, the judge is authorized to carry out the actions provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation[309].

S.I. Koneva points out that proof, and accordingly investigative actions, which are the main method of presenting and examining evidence, are permissible during preventive

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[304] Ibid. P.57, 154, 180.

[305] Andryushchenko T.I. The court as a subject of proof in criminal proceedings: diss. ... candidate of legal sciences. Volgograd, 2012. P.111-112, 115.

[306] Piyuk A.V. The role of the court in collecting evidence in a criminal case at the stage of preliminary investigation and during the consideration of the case in the court of first instance: diss. ... candidate of legal sciences. Tomsk, 2004. Pp. 201-202.

[307] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.124.

[308] Tsurluy O.Yu. Fundamentals of the judicial procedure for considering complaints in pre-trial stages of criminal proceedings. M., 2013. P.75.

[309] Dzabiev U.K. Use by the investigator of the results of operational-search measures in pre-trial proceedings: dis. ... candidate of legal sciences. Krasnodar, 2023. Pp. 161-162.

judicial review, however, due to the silence of the law on the limits of proof, the set of procedural means that can be used by the court and the parties to obtain and verify evidence, they can only be discussed in a hypothetical form. With regard to subsequent judicial review, the author notes that the line between intrusion into the procedural activities of the preliminary investigation body in collecting and evaluating evidence and establishing the circumstances that are the subject of judicial review must be drawn based on the principle of adversarial proceedings. Refusal to satisfy a motion by the defense to collect evidence solely on the grounds that the court does not interfere with the course of the investigation may be interpreted as a denial of access to justice[310].

The views of the scientific community on the limits of evidentiary activity of the court in pre-trial proceedings in a criminal case are not exhausted by the above positions. However, we can state that the majority of researchers stand on the position of admissibility for the court of only a limited range of investigative and other procedural actions provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation. The boundaries of such activity are determined by their authors, in our opinion, often only speculatively, based on the author's idea of the optimal, sufficient set of procedural means necessary for the court.

It should be noted that, whatever the views on this issue, "the court still conducts an examination of evidence: written materials and documents are read out, explanations of persons are heard, information contained in these sources on the circumstances to be established is assessed in aggregate, verified if necessary, and used in making the final decision" [311]. At the same time, these actions are usually limited to the materials presented, as well as the explanations of persons present at the court hearing.

Our generalization of judicial practice in considering petitions of officials to select a preventive measure in the form of detention showed that courts performed investigative actions – interrogation of witnesses at the request of the defense – in only 3% of cases[312]. The interrogation was conducted, as a rule, for the purpose of characterizing the

[310] Koneva S.I. On the issue of judge's participation in proving during the implementation of judicial review during preliminary investigation // Russian judge. 2014. No. 4. P. 24-25.
[311] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.412.
[312] See Appendix No. 5

personality of the suspect/accused or to clarify the possibility of his being under house arrest at a certain address. At the same time, there were also cases of the court refusing to satisfy the petition of the defense to interrogate witnesses, including those whose appearance was ensured, with reference to the fact that "the interrogation of a witness during the consideration of a petition to detain the accused is not provided for by the norms of the law" [313].

When the court checked the legality of the search conducted in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, the courts did not carry out investigative actions in the court session[314]. In our opinion, this is largely due to the fact that the defense participated in such court sessions in only 1.2% of cases[315].

In the course of summarizing the materials of the consideration of complaints of participants in criminal proceedings in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, no cases of investigative actions being carried out by the court were identified either[316]. In practice, there are rare cases of the court interrogating witnesses within the framework of this type of judicial review[317].

There were no cases of filing motions for investigative actions by the prosecution in the summarized materials.

At the same time, a survey of practitioners showed that a certain percentage of representatives of each of the professional communities surveyed believe that it is possible, during the implementation of the three main judicial control procedures, to carry out all investigative actions provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation, as well as to request items and documents[318].

Regarding the possibility of interrogating witnesses during the exercise of judicial review, the position of the judiciary was divided in half. Half of the judges (49.1%) indicated that the court has the authority to interrogate witnesses, the other half (45.9%) noted that the court is not authorized to interrogate witnesses, but can receive explanations

[313] See, for example: materials No. 3/1-461/2021, 3/1-494/2021 of the Nevsky District Court of St. Petersburg (Appendix No. 8).
[314] See Appendix No. 7.
[315] Ibid.
[316] See Appendix No. 6.
[317] See, for example: material No. 3/10-8/2023 // archive of the Vasileostrovsky District Court of St. Petersburg.
[318] See Appendices No. 1-4.

(clarifications) from them that are not presented in the procedural form of testimony. 5% found it difficult to answer the question or gave another answer.

42% of prosecutors, 40% of investigators and 70% of lawyers spoke in favor of the possibility of questioning witnesses. Accordingly, 56% of prosecutors, 52.7% of investigators and 26% of lawyers indicated the possibility of the court receiving from them only explanations (clarifications), not clothed in the procedural form of testimony. The remaining respondents gave different answers, with one of which we cannot but agree in essence: "such powers of the court are not directly provided for by either legislation or judicial practice, however, for the defense attorney this is the only opportunity to legalize information received from witnesses" [319].

With regard to questioning of a suspect, accused, witnesses and other persons during judicial review proceedings, S.V. Burmagin notes that the explanations of such persons, strictly speaking, are not evidence if they are taken by the court without observing the procedure provided for by the Criminal Procedure Code of the Russian Federation for interrogations (Articles 274-280), but due to the lack of clear regulation of cognitive and evidentiary activities for the types of criminal proceedings under consideration, the courts attach evidentiary value to the information contained in such explanations[320].

The admissibility of appointing a forensic examination during the consideration of complaints under Article 125 of the Criminal Procedure Code of the Russian Federation was indicated by 4% to 28% (depending on the professional community) of respondents, interrogation of an expert - by 18% to 34%, interrogation of a specialist - by 16% to 40%, interrogation of a suspect/accused - by 13% to 50%, inspection of material evidence - by 9.1% to 32%, inspection of the area and premises - by 3% to 18%, conducting an investigative experiment - by 1% to 12%, presentation for identification - by 2% to 12%, and examination - by 1% to 14%. The court's authority to request items and documents was indicated by 60% to 73.8% of respondents.

[319] See Appendix No. 1.
[320] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.412.

From 2% to 14% of respondents indicated that it is permissible to appoint a forensic examination during the consideration of petitions from officials to select and extend the term of preventive measures, to interrogate an expert - from 12% to 30%, to interrogate a specialist - from 12% to 36%, to interrogate a suspect/accused - from 23% to 56%, to examine material evidence - 5.5% to 24%, to inspect the area and premises - from 1% to 12%, to conduct an investigative experiment - from 1% to 8%, to present for identification - from 1% to 8%, and to conduct an examination - from 1% to 12%. From 54.5% to 70% of respondents indicated that the court has the authority to request items and documents.

From 1% to 20% of respondents indicated that it is permissible to appoint a forensic examination during the consideration of petitions of officials in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation , to interrogate an expert - from 7.3% to 28%, to interrogate a specialist - from 7.3% to 36%, to interrogate a suspect/accused - from 7.3% to 34%, to examine material evidence - from 3.6% to 30%, to inspect the area and premises - from 1% to 16%, to conduct an investigative experiment - from 1% to 12%, to present for identification - from 1% to 10%, and to conduct an examination - from 1% to 10%. From 47.3% to 62.3% indicated that the court has the authority to request items and documents.

The survey also showed that in the course of considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, in the practice of a certain percentage of respondents, the court carried out all investigative actions stipulated by Chapter 37 of the Criminal Procedure Code of the Russian Federation, and also requisitioned items and documents. For other types of judicial review, in the practice of respondents, most of the investigative actions stipulated by Chapter 37 of the Criminal Procedure Code of the Russian Federation, as well as requisitioned items and documents, were encountered, however, with regard to the consideration by the court of the issue of a preventive measure, none of the respondents indicated that the court conducted an investigative experiment or inspection of the area and premises. With regard to the consideration of petitions in accordance with Article 165 of the Criminal Procedure Code

of the Russian Federation, in the practice of respondents, an investigative experiment, presentation for identification and examination were not carried out[321].

Thus, the results of the survey of practitioners generally indicate the involvement of the court in the process of proof at the pre-trial stages of criminal proceedings and the availability of a large set of procedural means at its disposal, the boundaries of use of which are quite broad. At the same time, the procedural possibilities of the court to participate in the process of proof, as follows from the presented results of the generalization of judicial practice, are used by it extremely rarely. In our opinion, this circumstance is due to several factors.

The first factor is the procedural passivity of the parties to criminal proceedings. Thus, in the course of the survey, only 3.3% of judges and 12% of prosecutors indicated that during the exercise of judicial control, the parties often file motions for investigative actions. Only 10% of lawyers and 1.8% of investigators indicated that they often file such motions[322]. The fact that motions for investigative actions are not filed at all was indicated by 39.3% of judges, 61% of prosecutors, 42% of lawyers and 83.6% of investigators. The rest of the respondents noted that such motions are filed only occasionally.

At the same time, of those practitioners who answered positively to the relevant questions about filing motions for investigative actions, 46% of judges, 51.3% of prosecutors, 34.5% of lawyers and 0% of investigators indicated that such motions were not satisfied by the court. The rest answered that such motions were satisfied either often (18.9% of judges, 10.3% of prosecutors, 17.2% of lawyers, 66.7% of investigators) or sometimes (35.1% of judges, 38.4% of prosecutors, 48.3% of lawyers, 33.3% of investigators)[323].

It is evident from the survey results that when filing motions to conduct investigative actions, cases of their satisfaction are not rare, but according to the results of the generalization of judicial practice, the court only interrogated witnesses[324]. This circumstance forces us to conclude that, when answering the question in the survey about

[321] See Appendices No. 1-4.
[322] During the survey of lawyers and investigators, questions were asked about filing motions for investigative actions to be carried out directly by them.
[323] See Appendices No. 1-4.
[324] See Appendix No. 5-7.

filing and satisfying motions to conduct investigative actions, respondents had in mind primarily such an investigative action as interrogation. Thus, with respect to other investigative actions, cases of their performance by the court are either absent (according to the results of the generalization of practice), or relatively rare (according to the respondents' answers to questions about individual investigative actions).

In this regard, the second factor that determines the rare use by the court of its procedural powers is the lack of procedural activity in verifying evidence on the part of the court, which, as a rule, is limited to the volume of materials presented.

The third factor is the lack of proper legislative regulation of the limits of the court's competence to carry out investigative and other procedural actions. A judge, not having a legislatively established procedural toolkit for establishing the circumstances that are the subject of judicial review, inevitably faces the danger of going beyond the limits of his own competence by carrying out any investigative or other procedural action, which is why in practice such actions are rarely carried out.

Chapter 37 of the Criminal Procedure Code of the Russian Federation establishes a list of investigative and other procedural actions (including the requisition of objects and documents) that the court has the right to perform when considering a criminal case on the merits. In our opinion, during judicial review, the court is authorized to perform any investigative and other procedural actions provided for in this chapter to establish the circumstances included in the subject of proof in a specific judicial review proceeding.

Firstly, the current legislation does not contain a ban on the performance of any investigative or other procedural actions in judicial review proceedings. Scientists who consider the procedural capabilities of the court to be limited, in our opinion, proceed from their own vision of the optimal and effective procedural tools for the implementation of judicial review. At the same time, such authors often do not explain why the court is authorized to perform some investigative actions, while others are not.

Secondly, the court's possession of the powers in question is determined by the same reasons that determine the court's exercise of proof rather than other types of evidentiary activity. Thus, Chapters 10 and 11 of the Criminal Procedure Code of the Russian Federation, located in the general part of the Criminal Procedure Code of the

Russian Federation, regulate issues of proof, including means of proof and methods of collecting and verifying evidence, applicable to both the judicial and pre-trial stages of criminal proceedings.

Most of the judicial review powers of the court can be exercised at the judicial stages of criminal proceedings, while the degree of restriction of the constitutional rights of the individual, not related to the implementation by the court of the powers enshrined in Part 1 of Article 29 of the Criminal Procedure Code of the Russian Federation, is unchanged regardless of the stage of the criminal proceedings at which this restriction occurs. In this regard, there are no grounds to limit the competence of the court in the exercise of judicial control over the performance of investigative and other procedural actions that it has the right to perform when considering the case on the merits. The presence of such a restriction may lead to a situation in which, for example, when deciding on a preventive measure, the court, having the same information about the factual circumstances subject to establishment, comes to different conclusions regarding the need to choose a preventive measure, since during the pre-trial proceedings it will not be able to confirm or refute them using the investigative actions that it could perform during the trial. This situation is unacceptable, including from the point of view of the constitutional principle of equality. Since the scope of the court's cognitive activity on the issue of limiting the constitutional rights of an individual is the same for both the stage of judicial proceedings and the pre-trial stages of criminal proceedings, the means of this activity must also be the same. With regard to powers that can only be exercised by the court at the pre-trial stage (for example, granting permission to conduct a search), given the arguments presented, there are also no grounds for limiting the court's ability to use the necessary procedural mechanisms to verify the evidence presented to it.

Thirdly, according to the results of our survey, a certain percentage of representatives of each professional community indicated that any investigative or other procedural action provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation may be carried out during the 3 main judicial review proceedings. This means that there is a practical need for the court to exercise the relevant powers to effectively resolve the tasks of judicial review.

At the same time, theoretically possessing the same powers to participate in the process of proof as the court considering the case on the merits, the court cannot exercise them to the same extent during judicial review proceedings. This is due, among other things, to the difference in the goals of the said procedural functions, the specificity of the subject of judicial review, and the difference in the types of judicial decisions.

There is no doubt that the person initiating judicial review proceedings has the right to submit, along with the petition or complaint, materials substantiating them.

The situation is more complicated with the court obtaining additional materials. The Criminal Procedure Code of the Russian Federation regulates this issue only in relation to the court's consideration of petitions for the selection of a preventive measure. Thus, paragraph 3, part 7, article 108 of the Criminal Procedure Code of the Russian Federation states that an extension of the detention period is allowed for a period of no more than 72 hours at the request of one of the parties to provide additional evidence of the validity or invalidity of the selection of a preventive measure in the form of detention.

The Plenum of the Supreme Court of the Russian Federation, in turn, indicates the possibility of submitting additional materials in relation to the three main types of judicial review. Thus, paragraphs 1, 12, 13 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation" indicate that the court considers the complaint "on the basis of available data and additionally submitted materials"; persons participating in the court hearing have the right "to submit to the court additional materials related to the complaint", "to submit documents"; when preparing for the consideration of the complaint, the judge requests the materials that served as the basis for the decision or action of the official, as well as other data necessary to verify the arguments of the complaint.

Clause 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 01.06.2017 No. 19 “On the practice of considering by courts petitions for investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)” establishes the

right of persons participating in a court hearing to “present materials related to the issue under consideration and participate in their examination”.

Clause 13 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 19.12.2013 No. 41 "On the practice of applying the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions by the courts" repeats the provisions of clause 3, part 7, article 108 of the Criminal Procedure Code of the Russian Federation on extending the period of detention for the presentation of additional evidence. Clause 51.1 of this resolution states that when applying a preventive measure in the form of a prohibition of certain actions, the court imposes prohibitions on the person taking into account "the information provided by the parties".

Thus, the possibility of filling judicial review proceedings with additional materials is provided mainly in relation to their submission by the participants in such proceedings themselves. An exception is the legal regulation of the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, which provides for the court's authority to request relevant materials.

At the same time, according to Article 286 of the Criminal Procedure Code of the Russian Federation, documents submitted to the court session by both the parties and those requested by the court may be examined and attached to the materials of the criminal case on the basis of a ruling or decision of the court. The court also has this authority when exercising judicial review.

In examining the institution of consideration by the court of complaints against the actions (inaction) and decisions of officials conducting criminal prosecution, N.A. Bydantsev proposes to allow the judge to examine all circumstances of the criminal case or pre-trial investigation materials, the establishment of which could affect the legality, validity and motivation of the decision taken, at the legislative level[325].

Within the framework of this position, the court is effectively vested with the powers of a prosecutor under Soviet criminal procedure law. For example, when deciding

[325] Bydantsev N.A. Current issues of judicial review proceedings under Article 125 of the Criminal Procedure Code of the Russian Federation // Laws of Russia: experience, analysis, practice. 2020. No. 3. P. 11.

to place the accused in custody, the prosecutor had full access to the information contained in the case materials, including information concerning the proof of the crime and the accused's involvement in it. He assessed the entire set of evidence available in the case materials from the point of view of their relevance, admissibility, reliability, and sufficiency for the possibility of choosing this preventive measure[326].

carried out in the early 90s of the 20th century had as its purpose, among other things, the creation of independent judicial control over the restriction of constitutional rights of the individual. For these purposes, the prosecutor's powers to choose a preventive measure for the accused in the form of detention were transferred to the court. However, after this, the transfer to the judge of all the case materials that had been formed by the investigator by the time of the implementation of a specific judicial control proceeding did not follow.

In this regard, it is noteworthy to note the observation of L.A. Aleksandrova, who noted that, paradoxically, during the period of the RSFSR Code of Criminal Procedure, when both the prosecutor's office and the investigative bodies were assigned to the same group of state bodies as the court conducting criminal proceedings, and the prosecutor's office had practically all supervisory functions, the most severe coercive measures were used less frequently, and the process was carefully monitored from the point of view of its legality. This was noted by the Prosecutor General of the Russian Federation, who noted in 2008 that the courts granted more than 90% of investigators' motions to take suspects into custody. When the prosecutor gave the sanction for arrest, this figure did not exceed 70%[327].

The modern Russian court found itself in a difficult situation. Called upon to consider the investigator's petition impartially, it became biased in that it had at its disposal only those materials that were compiled by the investigator. These materials may not contain evidence that would testify, for example, to the groundlessness of the

[326] Kirillova N.P. Theoretical and practical problems of judicial review in Russian legislation // Criminal justice: the connection of times: Selected materials of the international scientific conference, St. Petersburg, October 6-8, 2010. Moscow, 2012. P. 49.

[327] Aleksandrova L.A. The relationship between the functions of judicial control and justice in criminal proceedings of the Russian Federation // Criminal Justice. 2016. No. 1. P. 16.

suspicion brought against the person brought to criminal responsibility, or evidence that would characterize his personality from a positive side.

It should be noted that the defense is placed in unequal conditions with the prosecution in this aspect, since it may not know at all about the presence of certain evidence in the case. Thus, according to the provisions of Articles 46, 47, 53 of the Criminal Procedure Code of the Russian Federation, the suspect, the accused and their defense attorney must be familiarized with only a limited amount of procedural documents before fulfilling the requirements of Article 217 of the Criminal Procedure Code of the Russian Federation. The victim and civil plaintiff find themselves in the same situation.

The court may also not know about the existence of certain evidence. According to the requirements of Part 3 of Article 108 of the Criminal Procedure Code of the Russian Federation, the investigator himself forms the volume of case materials that are submitted to the court along with the decision to initiate a petition for the selection of a preventive measure. The law only requires these materials to "confirm the validity of the petition" (Part 3 of Article 108 of the Criminal Procedure Code of the Russian Federation). When considering the investigator's petitions to limit the constitutional rights of citizens, "materials confirming the existence of grounds for the investigative action" must be attached to them[328].

When initiating judicial review proceedings in accordance with Article 125 of the Code of Criminal Procedure, the materials are attached to the complaint by the applicant himself, but the volume of these materials is limited only to those documents from the criminal case, copies of which are at his disposal. When considering the complaint, the court may, on its own initiative, request additional materials from the investigator, but their formation remains within the procedural authority of the investigator, since it is he who determines the volume of documents that served as the basis for the adoption of the

[328] Clause 1, 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 “On the practice of considering petitions by courts for investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)” // RLS “Consultant Plus”.

contested decision or the performance of the contested action, which is confirmed by judicial practice[329].

Thus, within the framework of various types of judicial review, the volume of materials submitted to the court is determined, with rare exceptions, by officials of the prosecution. In this regard, the question arises whether the court is authorized to request all materials of the criminal case if it considers this necessary for the resolution of judicial review proceedings.

The rule on the secrecy of the preliminary investigation and the inadmissibility of disclosing its data is one of the general conditions of the preliminary investigation (Article 161 of the Criminal Procedure Code of the Russian Federation).

On the one hand, in order to solve a specific judicial control task, the court must have the authority to request from the investigator any documents contained in the criminal case materials. Concealing these documents from the court may not meet the goals of judicial control and reduce its effectiveness. On the other hand, the implementation of this authority may conflict with the goals of criminal proceedings, since the secrecy of the preliminary investigation is necessary both for solving the tasks of the preliminary investigation itself to comprehensively establish the circumstances of the case, and for observing the rights of individuals participating in the criminal process[330].

This dilemma can be resolved in various ways. In particular, N.A. Andronik suggests that in order to ensure non-disclosure of preliminary investigation data, the right of the accused and his defense attorney to become fully acquainted with the materials presented by the preliminary investigation body in support of the stated petition for the selection of a preventive measure should be limited during the court hearing[331]. N.V. Azarenok adheres to a similar approach, noting that the right to become acquainted with such materials may be limited in order to maintain the secrecy of the data substantiating the suspicion or accusation, as well as personal information about other participants in

[329] See, for example: material No. 3/10-64/2022 of the Smolninsky District Court of St. Petersburg // archive of the Smolninsky District Court of St. Petersburg.
[330] Course of criminal procedure / edited by L.V.Golovko. 2nd ed., corrected. M., 2017. P.673.
[331] Andronik N.A. Preventive measures chosen by the court at the request of the preliminary investigation bodies: problems of law enforcement and legislative regulation: diss. ... candidate of legal sciences. Ekaterinburg, 2022. P. 13.

criminal proceedings (victims, witnesses, accomplices)[332]. A.V. Polyakova suggests, without limiting the volume of materials presented to the court, limiting the ability of the participants in the process to become acquainted with them, including by placing a number of materials "in a separate envelope, the contents of which can only be familiarized with by the judge considering the petition." The grounds for such a restriction are both the need to maintain the secrecy of the investigation and to ensure the safety of other participants[333].

We cannot agree with these positions, since limiting the parties' ability to familiarize themselves with the materials already submitted to the court will mean that the grounds for the court decision will remain secret for them, which contradicts the requirements of the validity and motivation of the judicial act, the principles of equality and adversarial proceedings, and violates the right to appeal the judicial act. In addition, the right to familiarize themselves with the materials of the judicial review proceedings is already secured for its participants by the current legal norms[334]. With regard to ensuring the safety of the participants in the process, it should be noted that the relevant measures can be applied by the investigator in accordance with Part 3 of Article 11 of the Criminal Procedure Code of the Russian Federation during the investigation of the main criminal case.

Another approach to the problem under consideration is to propose closing court hearings held during the exercise of judicial review. In particular, A.P. Lipinsky, classifying classical forms of judicial review as special proceedings[335], believes that court hearings during the consideration of cases of special proceedings, held in parallel with the preliminary investigation of a criminal case, in order to ensure the safety of pre-trial

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[332] Azarenok N.V. The problem of familiarizing the defense with the materials submitted by the investigator to the court in accordance with Article 108 of the Criminal Procedure Code of the Russian Federation // Bulletin of the Omsk Law Academy. 2016. No. 4 (33). P. 94.

[333] Polyakova A.V. Implementation of the principle of adversarial proceedings in the activities of the investigator and defense attorney in pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2024. P. 142, 145.

[334] See, for example: paragraph 26 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 No. "On the practice of applying the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions by the courts"; paragraph 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 "On the practice of considering complaints by the courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".

[335] Lipinsky A.P. Ensuring the inadmissibility of disclosure of pre-trial proceedings data: dis. ... candidate of legal sciences. Izhevsk, 2023. P. 181.

proceedings data, should be held in a closed court hearing, and the court should take from the participants in the court hearing, except for the investigator, the head of the investigative body and the prosecutor, a receipt on the inadmissibility of disclosing pre-trial proceedings data[336]. O.O. Avakov, with regard to the court's decision on the legality of the investigative action taken, also believes it necessary to provide for the court's obligation to take a written undertaking on non-disclosure of information obtained from procedural documents[337].

The above approach is also encountered in the practice of courts. In particular, the Supreme Court of the Republic of Adygea in one of its decisions indicated that "the judge must organize the consideration of the complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation so that the materials of the proceedings on the complaint do not contain unnecessary documents, familiarization with which would be contrary to the interests of the preliminary investigation and could be associated with the violation of the rights and legitimate interests of the participants in the criminal proceedings. In the event that consideration of the complaint without the disclosure of such documents is impossible, the judge must warn all participants in the criminal proceedings about the inadmissibility of disclosing the data of the preliminary investigation without the permission of the investigator, about which a written undertaking with a warning about liability under Article 310 of the Criminal Code of the Russian Federation is taken, which is attached to the criminal case" [338].

We cannot agree with the above approaches. Thus, according to the legal positions of the Supreme Court of the Russian Federation, the main types of judicial review are carried out in an open court session, with the exception of cases provided for in Article 241 of the Criminal Procedure Code of the Russian Federation[339]. Thus, as a general rule,

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[336] Ibid. P.13, 190-191.

[337] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.112-113.

[338] Cassation ruling of the Supreme Court of the Republic of Adygea dated 19.10.2011 no. // RLS "Consultant Plus".

[339] Clause 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation"; clause 28 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 "On the practice of applying the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions by courts"; clause 6 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 "On the practice of considering petitions for investigative actions related to the restriction

there is no risk of disclosure of a secret protected by law (clause 1, part 2, Article 241 of the Criminal Procedure Code of the Russian Federation) in relation to the secrecy of the preliminary investigation[340]. The withdrawal by the court of a written undertaking not to disclose the data of the judicial review proceedings will, in our opinion, be an intrusion into the competence of the preliminary investigation bodies, since, according to the provisions of Article 161 of the Criminal Procedure Code of the Russian Federation, its withdrawal is the exclusive authority of the official conducting the criminal prosecution, who independently determines the volume of materials to which the regime of secrecy of the preliminary investigation must be extended.

In our opinion, it is necessary to adhere to a differentiated approach to ensuring the secrecy of the preliminary investigation when exercising judicial review. Thus, paragraph 1 of clause 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation" states that disclosure of data contained in the materials of a criminal case is permitted only if this does not contradict the interests of the preliminary investigation and is not associated with the violation of the rights and legitimate interests of participants in criminal proceedings. This provision can be interpreted in two ways. On the one hand, given that determining the interests of the preliminary investigation is within the procedural authority of the investigator, he has the right to refuse to provide the court, at the request of the latter, those documents, familiarization of the parties with which, in the investigator's opinion, contradicts the stated goals. On the other hand, the provision in question only imposes on the court the obligation to maintain the secrecy of the preliminary investigation when examining the documents requested by it, which the investigator is obliged to provide. The latter interpretation follows from the systemic relationship of the provision in question with paragraph 2 of clause 12 of the cited resolution of the Plenum of the Supreme Court of the Russian Federation, according to

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of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)" // RLS "Consultant Plus".

[340] Our position, however, is that it is necessary to consider motions filed in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation in a closed court session, which is disclosed in more detail in §4 of this chapter.

which the judge, in addition to the materials that served as the basis for the decision or action of the official, also requests other data necessary to verify the arguments of the complaint.

We believe that both approaches arising from the aforementioned Resolution of the Plenum of the Supreme Court of the Russian Federation are applicable. At the same time, the investigator's ability to refuse to provide evidence to the court on the grounds of the need to maintain the secrecy of the preliminary investigation will depend on the persons to whom, in the investigator's opinion, the regime of this secrecy should be extended. Thus, if the investigator states that, from the point of view of the interests of the investigation, the relevant evidence should not be made public to third parties who are not participants in the judicial review proceedings, then the issue of examining this evidence can be resolved by, for example, closing the court hearing in whole or in part on the basis of paragraph 1 of Part 2 of Article 241 of the Criminal Procedure Code of the Russian Federation. If the investigator justifies the impossibility of providing evidence by the need to keep it secret from one of the participants in the judicial review proceedings, the court is not authorized to request such evidence.

For this reason, we cannot agree with the position of S.V. Nikitina, who believes that in the event of a lack of necessary materials, the judge, during preparation for a court hearing held to decide on a preventive measure, has the right to oblige the preliminary investigation bodies to submit the missing materials, in the absence of which, by the beginning of the court hearing, the petition is considered not to have been filed[341].

Thus, the court’s powers to request materials from a criminal case are limited by the rule on the secrecy of the preliminary investigation.

At the same time, the materials of a criminal case may contain documents in relation to which the secret of the preliminary investigation has been disclosed.

Firstly, we are talking about those documents that the victim (Article 42 of the Criminal Procedure Code of the Russian Federation), the suspect (Article 46 of the Criminal Procedure Code of the Russian Federation), the accused (Article 47 of the

[341] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.176.

Criminal Procedure Code of the Russian Federation), the defense attorney (Article 53 of the Criminal Procedure Code of the Russian Federation) and other persons have the right to become familiar with before the end of the preliminary investigation. These documents include protocols of investigative actions carried out at the request of or with the participation of the said persons, decisions on the appointment of expert examinations, expert opinions and protocols of their interrogation, and other documents that were or should have been presented to the suspect, the accused, and other persons.

Secondly, the secret of the investigation was disclosed in relation to documents attached to the materials of the criminal case at the request of the party that submitted them to the investigator.

Thirdly, we are talking about documents that were not presented to a participant in criminal proceedings and should not have been presented, but are in his possession on legal grounds. For example, after a search of a home, the accused familiarized himself with the search materials in court and made a copy of the witness interrogation protocol located there.

It should be noted that with respect to the above groups of documents, the secret of the investigation is disclosed only to those persons to whom these documents were directly presented or should have been presented, or who presented these documents for inclusion in the materials of the criminal case or judicial review proceedings. In this regard, if the position of the investigation is that these documents cannot be made public to third parties, the court is authorized to close the court hearing in whole or in part. If the investigator indicates that these documents must be kept secret from another participant in the court hearing, for example, when the victim files a petition to obtain from the case materials a copy of the protocol of a confrontation between him and a witness with whom the accused was not familiarized, the court is not authorized to obtain such documents.

An important issue is the possibility of attaching a copy of the relevant document, the original of which is available in the materials of the main criminal case, to the materials of the judicial review proceedings. As a rule, the party has only an uncertified copy of such a document (interrogation protocol, confrontation, etc.), since the law does

not oblige an official to certify copies of procedural documents received by participants in criminal proceedings who do not have authority.

In our opinion, given that the absence of the original by the party is due in this case to objective reasons, if the officials of the body conducting the criminal prosecution do not challenge the content of the submitted copy, the court is authorized to consider it as admissible evidence. If the official denies the correspondence of the examined copy to the original in the materials of the main criminal case or finds it difficult to express a position on this issue, the court may request a certified copy of the relevant document from the official. Such an approach will fully correspond to the position of the Constitutional Court of the Russian Federation applicable to judicial review, according to which the principles of adversarial proceedings and equality, which are a necessary prerequisite for ensuring the accused the right to defense, imply providing the parties to the prosecution and defense participating in the trial with equal procedural opportunities to defend their legitimate interests by participating in the proof [342].

The rule on the secrecy of the preliminary investigation does not apply to objects and documents submitted by the parties and requested by the court from various bodies and organizations that are not included in the materials of the main criminal case. Such evidence will have the status of new not only for judicial review proceedings, but also for the criminal case.

For the stage of preliminary investigation, the Constitutional Court of the Russian Federation has formulated in an exhaustive manner the position regarding the powers of the investigator to refuse to attach evidence presented by a party to the case materials. Thus, the Constitutional Court of the Russian Federation pointed out the inadmissibility of arbitrary refusal by an official or body conducting a preliminary investigation both to obtain evidence requested by the defense and to attach the evidence presented by it to the materials of the criminal case. According to the meaning of the normative provisions contained in the Criminal Procedure Code of the Russian Federation in their relationship

[342] Resolution of the Constitutional Court of the Russian Federation of 02.07.1998 No. 20-P “On the case of verifying the constitutionality of certain provisions of Articles 331 and 464 of the Criminal Procedure Code of the RSFSR in connection with complaints from a number of citizens” // RLS “Consultant Plus”.

with the provisions of Articles 45, 46 (Part 1), 50 (Part 2) and 123 (Part 3) of the Constitution of the Russian Federation, such a refusal is possible only in cases where the relevant evidence is not related to the criminal case under investigation and is not capable of confirming the presence or absence of a criminal event, the guilt or innocence of a person in its commission, other circumstances subject to establishment during criminal proceedings, when evidence, as not meeting the requirements of the law, is inadmissible or when the circumstances that the evidence specified in the party's petition is intended to confirm have already been established on the basis of a sufficient set of other evidence , in connection with which the examination of another piece of evidence from the standpoint of the principle of reasonableness turns out to be redundant[343].

Thus, the Constitutional Court of the Russian Federation, based on the provisions of the Criminal Procedure Code of the Russian Federation on proof, formulated criteria for resolving the issue of the need to attach a certain piece of evidence to the case materials. The evidence must be relevant, admissible, and its attachment must be subject to the principle of reasonableness from the point of view of the absence of a sufficient set of evidence already collected in the case of the circumstance that is intended to confirm the evidence being presented.

These criteria should also be extended to judicial review activities, since the formation of both the materials of the criminal case and the materials of judicial review proceedings is subject to uniform methods of procedural knowledge. In particular, the application of the admissibility criterion should not undergo changes in the implementation of judicial review. Otherwise, it would lead to a violation of the requirements of Part 2 of Article 50 of the Constitution of the Russian Federation, according to which the use of evidence obtained in violation of federal law is not allowed in the administration of justice.

The relevance of evidence is its ability to confirm the presence or absence of circumstances subject to proof. These circumstances form the subject of proof. The

[343] Definition of the Constitutional Court of the Russian Federation of 21.12.2004 No. 467-O “On the complaint of citizen Pyatnichuk Petr Efimovich on the violation of his constitutional rights by the provisions of Articles 46, 86 and 161 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

general subject of proof in resolving a criminal case, being formulated in Article 73 of the Criminal Procedure Code of the Russian Federation, differs from the subject of proof in the implementation of judicial review, which is due to the difference in the subject and purposes of these types of procedural activities of the court.

The general subject of proof for all forms of judicial review are the circumstances of the legality and validity of the restriction of the constitutional rights of the individual. At the same time, as for the function of resolving a criminal case, in addition to the general, there are special subjects of proof (proceedings on criminal cases against minors - Art. 421 of the Criminal Procedure Code of the Russian Federation; proceedings on the application of compulsory medical measures - Art. 434 of the Criminal Procedure Code of the Russian Federation), and for certain types of judicial review, the subject of proof has its own specifics, which is noted in the scientific literature[344].

When deciding on the application of a preventive measure, the special subject of proof includes, among other things, the circumstances of the presence or absence of a reasonable suspicion of a person's involvement in the crime committed[345]; when checking the legality of the investigative action carried out in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation – the circumstances of the urgency of its production, compliance with the procedure during its production[346].

When considering a complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the special subject of proof is the circumstances of the legality and validity of the actions (inactions) performed and decisions taken by officials authorized to carry out criminal prosecution. Moreover, the list of contested actions (inactions) and decisions of officials is quite extensive.

Our generalization of judicial practice showed that in most cases, participants in criminal proceedings appealed against the decision to refuse to initiate a criminal case

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[344] See, for example: Mirgorodskaya E.R. Judicial procedure for considering complaints at the stage of initiating a criminal case: author's abstract. dis. ... candidate of legal sciences. Chelyabinsk, 2024. P. 12.

[345] Clause 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 "On the practice of applying by courts the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions" // RLS "Consultant Plus".

[346] Clause 16 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 01.06.2017 No. 19 "On the practice of considering by courts petitions for investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)" // RLS "Consultant Plus".

(29.3% of the studied judicial acts), as well as the inaction of officials, expressed in the failure to conduct or improperly conduct an investigation of a report of a crime, in the failure to make a decision on its results (19.2%). Appealing the decision to refuse to satisfy the stated petition took place in 4.2% of cases, the decision to initiate a criminal case - in 2.4% of cases, the decision to terminate a criminal case or criminal prosecution - in 1.8 % of cases, the decision to declare a person wanted - in 1.2% of cases, the decision to suspend the preliminary investigation - in 0.6% of cases. The subject of the judicial review was the failure of an official to consider a filed petition (5.4%), failure of a party to familiarize itself with procedural documents (6.6%), failure to consider or improper consideration of an application for payment for the services of a lawyer (4.8%), actions of an official to seize items and documents or refusal to return them (3.6%), the investigative actions themselves and decisions of officials on their conduct (3.6%), improper conduct of a preliminary investigation, including failure to carry out the necessary investigative and other procedural actions (3%), improper implementation of prosecutorial supervision and departmental control, outside the procedure provided for by Article 124 of the Criminal Procedure Code of the Russian Federation (1.8%), failure of the prosecutor and the head of the investigative body to consider a complaint filed in accordance with Article 124 of the Criminal Procedure Code of the Russian Federation (1.8%), failure of an official to terminate criminal prosecution (1.8%), failure to recognize a person as a victim (1.8%), failure to refer the case according to jurisdiction (0.6%), etc. In 6.6% of cases, the subject of the appeal was not disclosed in the decision. As a rule, this was the case when the court made a decision not on the merits of the complaint filed[347]. For each type of decision or action (inaction) of an official, the special subject of proof is filled with independent content, conditioned by the nature of such decision or action (inaction).

Thus, the question of the need to include this or that piece of evidence in the materials of judicial review proceedings must be decided from the point of view of its

[347] See Appendix No. 6.

relevance, that is, the ability to confirm or refute the presence of circumstances included in the general and special subjects of proof for a specific judicial review proceeding.

The procedure for applying the criterion of sufficiency of evidence within the framework of judicial review proceedings does not differ from its application when considering a criminal case on the merits. If the court comes to the conclusion that a circumstance that must be confirmed or refuted by the new evidence presented has already been confirmed or refuted by a sufficient set of other evidence, the court refuses to include such evidence in the materials of the judicial review proceedings.

The above restrictions on the court's requisition of items and documents from bodies and organizations also apply to the court's powers to conduct investigative actions, since the latter are also aimed at obtaining evidence.

It is advisable to divide the investigative actions carried out during judicial review proceedings into two groups. The first group should include investigative actions aimed at directly examining the sources of evidence presented in the materials of the judicial review proceedings. The second group includes investigative actions carried out by the court at the request of the parties or on its own initiative, which were not previously carried out at the stage of preliminary investigation or were carried out, but their results were not presented in the judicial review proceedings.

When examining investigative actions related to the first group, the question arises as to whether the court is authorized to directly interrogate a witness whose interrogation protocol is presented in the materials of the judicial review proceedings, to examine material evidence whose inspection protocol is available in the judicial review proceedings, to interrogate an expert if the materials contain a protocol of his interrogation, and so on.

In our opinion, the court has such powers. This position is determined not only by the unity of epistemological methods of cognition, but also by the effect of immediacy in judicial review proceedings as a general condition of judicial proceedings (Article 240 of the Criminal Procedure Code of the Russian Federation). The need to examine the initial evidence may arise if there are grounds to believe that its content differs significantly from the corresponding protocol of the investigative action, and if this difference is

important for the correct resolution of the complaint or petition. Such a basis may be, for example, the presence in the protocol of the interrogation of a witness or the protocol of the inspection of the subject of comments regarding the distortion of the actual content of the testimony or the results of the inspection.

In connection with the general conditions of judicial proceedings, including their immediacy, in our opinion, the court's refusal to interrogate a witness who has appeared in court is not permissible (Part 4 of Article 271 of the Criminal Procedure Code of the Russian Federation). For this reason, in order to interrogate such a witness, it is sufficient for the party to state that there are grounds to believe that the witness will provide the court with information that differs significantly from the testimony given to the investigator.

The court is obliged to interrogate the suspect/accused in any case if he/she requests it. This circumstance is dictated both by the need to comply with the requirement of direct examination of evidence, and by the need to ensure the rights of the suspect/accused to defend themselves by any means and methods not prohibited by law, to object to the accusation and to testify on it (Articles 46, 47 of the Criminal Procedure Code of the Russian Federation).

When considering a criminal case on its merits, the victim and witness are directly heard in the court session, and if there are grounds provided by law, their testimony given at the stage of preliminary investigation may be read out. With regard to judicial review, on the contrary, as a general rule, the court examines the interrogation protocols of the said persons if they are presented to the court, and only if the above conditions are present is the court authorized to directly interrogate these participants. The accused, having the right to defend himself against the charge brought, as well as the suspect, have the right to testify in the absence of these conditions during judicial review proceedings.

A study of judicial practice showed that if the court made a decision to interrogate witnesses, then the latter, as a rule, were explained the provisions of Article 56 of the Criminal Procedure Code of the Russian Federation, Article 51 of the Constitution of the Russian Federation, and were warned of criminal liability for giving knowingly false

testimony under Article 307 of the Criminal Code of the Russian Federation[348], but were not warned of criminal liability for refusing to give testimony under Article 308 of the Criminal Code of the Russian Federation, which occurred in rare cases[349].

When a suspect/accused person participated in a court hearing, as a rule, the rights provided for in Articles 46, 47 of the Criminal Procedure Code of the Russian Federation and Article 51 of the Constitution of the Russian Federation were explained to him/her, however, since the minutes of court hearings almost always lacked an indication of conducting an interrogation when receiving answers from the suspect/accused to questions from the court and other participants in the court hearing[350], it can be concluded that the courts do not consider the information received from the suspect/accused to be testimony given during interrogation.

In our opinion, information provided by a suspect, accused, victim, witness, expert and specialist on the circumstances included in the subject of proof in a specific judicial review proceeding is testimony and must be obtained in the form of interrogation, in accordance with the requirements stipulated by the Criminal Procedure Code of the Russian Federation. In order to comply with the requirements of admissibility of evidence, the interrogation of a witness, victim, expert and specialist must be carried out with a warning about criminal liability for giving knowingly false testimony under Article 307 of the Criminal Code of the Russian Federation, and the interrogation of a victim and witness - also for refusing to give testimony under Article 308 of the Criminal Code of the Russian Federation, with an explanation of their procedural rights. Likewise, the suspect and accused must be explained the rights stipulated by Articles 46 and 47 of the Criminal Procedure Code of the Russian Federation, including the provision that their

[348] See, for example: materials of the Pushkinsky District Court of St. Petersburg No. 3/1-111/2023, 3/1-138/2023 on the selection of a preventive measure in the form of detention (Appendix No. 8); material of the Vasileostrovsky District Court of St. Petersburg No. 3/10-8/2023 on a complaint filed in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation // archive of the Vasileostrovsky District Court of St. Petersburg.

[349] See, for example: material of the Lodeynopolsky City Court of the Leningrad Region No. 3/1-20/2019 on the selection of a preventive measure in the form of detention // archive of the Lodeynopolsky City Court of the Leningrad Region.

[350] See, for example: material of the Pushkinsky District Court of St. Petersburg No. 3/1-157/2023 on the selection of a preventive measure in the form of detention (Appendix No. 8).

testimony can be used as evidence[351] both in judicial review proceedings and in the main criminal case.

Investigative actions of the second group are carried out in the manner prescribed by Chapter 37 of the Criminal Procedure Code of the Russian Federation. The court decides in each specific case whether they are necessary. As N.A. Kolokolov notes in relation to judicial review, courts should always be given the opportunity, if necessary, to determine the scope and limits of review in a specific case[352].

At the same time, the definition of the limits of the court's competence in the conduct of investigative actions of this group is connected with the problem of the court's activity in the process of collecting and verifying evidence. There is no unity in the scientific community on this issue.

E.A. Sukolenko points out that the principle of adversarial criminal proceedings does not exclude the active role of the court in investigating the circumstances of a criminal case in pre-trial proceedings in order to make a lawful decision[353]. Zh.S. Senkina notes that the presence of asymmetry in the ability of the parties to defend public and private interests in pre-trial proof dictates the need to increase the activity of the court in judicial control proceedings and limit it in legal proceedings. Expanding the principle of discretion in judicial stages inevitably reduces the activity of the court in judicial proof[354]. A similar position is taken by I.Yu. Tarichko[355] and some other researchers.

A different approach to the court's activity is taken, in particular, by V.M. Petrovets, who notes that if the court does not have sufficient circumstances established during the consideration of the case to resolve the stated motions or complaints, it is obliged to make a decision only on the basis of those that exist, since the issues of proof

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[351] See, for example: Kolokolov N.A. Methodology for Conducting Basic Judicial Control Actions at the Preliminary Investigation Stage. 2nd ed., revised and enlarged. Moscow, 2015. Part 1. P. 174.

[352] Kolokolov N.A. Judicial review at the stage of preliminary investigation of crimes: an important function of the judiciary (problems of implementation in the context of legal reform): diss. ... candidate of legal sciences. Moscow, 1998. P.150.

[353] Sukolenko E.A. Court as a subject of criminal procedural legal relations in pre-trial criminal proceedings: diss. ... candidate of legal sciences. Rostov-on-Don, 2011. P.10.

[354] Senkina Zh.S. Activity of the court in criminal procedural proof: author's abstract. dis. ... candidate of legal sciences. Nizhny Novgorod, 2014. P.11.

[355] Tarichko I. Yu. The function of judicial review in Russian criminal proceedings: author's abstract. dis. … candidate of legal sciences. Omsk, 2004. P. 7.

and argumentation of the stated demands, by analogy with the trial in the court of first instance, should lie with the parties, and not with the court[356].

With regard to the consideration of complaints from participants in criminal proceedings, A.N. Ryzhikh points out that the court cannot request additional evidence on its own initiative for the reason that it is the prosecution that has the responsibility to prove the legality of its own actions; failure to fulfill this responsibility should become grounds for the judge to recognize them as illegal[357].

In science, there are differentiated approaches to the issue of the active participation of the court in the process of proof. For example, A.A. Ustinov notes that if, when considering motions in accordance with Article 165 of the Code of Criminal Procedure of the Russian Federation, the process of collecting evidence is usually limited by the scope of the evidentiary volume provided by the prosecution, then during the proceedings on complaints, the process of collecting evidence is expanded by the court's activity in requesting the necessary materials, conducting interrogations of a fairly wide range of people and performing other procedural actions, and when the court considers issues related to preventive measures, the process of collecting evidence is usually assigned to the parties. At the same time, when evaluating the evidence presented by the parties, the court has its own "active" powers to examine the evidence to the extent that this is required for the purpose of verifying and evaluating the evidence base provided by the participants in the process on the part of the defense and prosecution[358].

V.V. Rudich, in turn, differentiates the court's activity in deciding on a preventive measure depending on the presence of doubts about the suspect's involvement in the crime committed. The author points out that if there was a red-handed detention and the suspect does not deny his involvement in the crime, and the materials presented contain sufficient and reliable information, then the court has the right not to conduct additional judicial investigative actions. If the crime was committed in conditions of non-obviousness, and

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[356] Petrovets V.M. Forms and limits of court resolution of issues in pre-trial proceedings in Russian criminal proceedings: diss. ... candidate of legal sciences. Tyumen, 2007. P.154.

[357] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Ekaterinburg, 2008. P.142-143.

[358] Ustinov A.A. Proof during consideration of criminal case materials by the court during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. P.55, 85-86.

the suspect denies his involvement in it, then the court is obliged to verify the validity of the suspicion using judicial investigative actions[359].

A.V. Piyuk[360] and T.A. Andryushchenko[361] point out that the court has the right to receive new evidence only for the purpose of verifying evidence already available in the material of the judicial review proceedings, and not for the purpose of filling gaps in the evidence.

N.P. Kirillova, in relation to the stage of judicial proceedings, notes that the court should not assume the obligation to prove the thesis put forward by a party, and the obligation to compensate for the shortcomings in the formation of the evidentiary base of the parties. At the same time, in order to solve the tasks set before the court, it should be authorized to request any evidence, both incriminating and exculpatory, have the right to initiate any judicial actions, but solely for the purpose of checking and evaluating the evidence presented by the parties[362].

While agreeing with this position, we believe that it should also be extended to the procedure for implementing judicial review, which is dictated, firstly, by the unity of the applied methods of cognition and, secondly, by the operation of the adversarial principle. Thus, within the framework of judicial review proceedings, the court cannot, on its own initiative, collect evidence within the meaning of Article 86 of the Criminal Procedure Code of the Russian Federation, since this would turn the court into a criminal prosecution body and would contradict the division of functions of participants in criminal proceedings. The court is allowed to obtain new evidence only in accordance with Article 87 of the Criminal Procedure Code of the Russian Federation - for the purpose of verifying the evidence presented. For example, if the court believes that the evidence presented by the investigator is insufficient to take the accused into custody or to permit

[359] Rudich V.V. Mechanism for applying preventive measures in Russian criminal proceedings: diss. ... Doctor of Law. Ekaterinburg, 2020. P.124.
[360] Piyuk A.V. The role of the court in collecting evidence in a criminal case at the stage of preliminary investigation and during the consideration of the case in the court of first instance: diss. ... candidate of legal sciences. Tomsk, 2004. Pp. 74-75.
[361] Andryushchenko T.I. The court as a subject of proof in criminal proceedings: diss. ... candidate of legal sciences. Volgograd, 2012. P.111-112, 115.
[362] Kirillova N.P. Procedural functions of professional participants in adversarial criminal proceedings. Monograph. St. Petersburg, 2007. P.138-139.

a search of his home, it has no right to search for additional evidence in order to form a sufficient set of evidence that would indicate the need to satisfy the investigator's petition.

Thus, when implementing judicial review, the court is authorized to obtain new evidence, including through investigative actions, only within the framework of such an element of proof as verification of already existing evidence. The collection of evidence by the court for the purpose of filling gaps in proving circumstances included in the subject of judicial review proceedings is inadmissible. The only exceptions should be the actions of the court caused by the legal inequality of the parties to criminal proceedings[363]. For example, information constituting a banking secret cannot be provided to the defense at the request of a lawyer.

At the same time, we cannot agree with the position of those researchers who make the court's authority to obtain new evidence dependent on whether the court obtains it on its own initiative or at the request of a party, since if, during judicial review proceedings, a procedural need arises to verify some evidence, then it does not matter whether the reason for such verification is a request from a party or the initiative of the court.

The timeframes for carrying out individual judicial review procedures have a significant impact on the real possibility of conducting investigative and other procedural actions. The court's performance of these actions depends on the availability of an objective possibility of obtaining the relevant evidence within these timeframes.

It should be noted that time limits are not provided for all types of judicial review. Thus, a time limit implies that beyond its limits the court is deprived of the opportunity to consider the issue put to it. For example, according to the provisions of Article 108 of the Criminal Procedure Code of the Russian Federation, the time limit for considering an official's petition for detention is limited to 48 hours or 120 hours (in the case of an extension of the detention period) from the moment of detention. At the same time, the 8-hour period for considering an official's petition established by Part 4 of Article 108 of the Criminal Procedure Code of the Russian Federation is not preclusive. When

[363] The statement of legal inequality of the parties to judicial review proceedings is nothing new in legal science. For example, A.V. Polyakova notes that "the prosecution and the defense have different rights related to the presentation of evidence to the court to substantiate their position on the selection of a preventive measure" (see: Polyakova A.V. Implementation of the principle of adversarial proceedings in the activities of the investigator and defense attorney in pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2024. P. 135).

considering a petition to extend the detention period, the period for its consideration is limited by the previously selected or extended period of validity of this preventive measure.

A petition of an official for permission to carry out an investigative action in accordance with Part 2 of Article 165 of the Criminal Procedure Code of the Russian Federation must be considered within 24 hours. In our opinion, exceeding this period does not predetermine the court's refusal to satisfy the filed petition; however, given the requirements for efficiency in planning and carrying out investigative actions by the preliminary investigation body, going beyond the specified period is not permissible.

Certain types of judicial review do not have time limits. Thus, the time limit for considering an official's petition to impose additional restrictions on the accused in accordance with Article 105.1 of the Criminal Procedure Code of the Russian Federation is not regulated by law.

The 14-day period for consideration of a complaint, established by Part 3 of Article 125 of the Code of Criminal Procedure of the Russian Federation, is not preclusive and in this sense is not the maximum. As a rule, this period is not enough for the courts to consider a filed complaint due to the fact that during the specified time the court does not have time to receive the materials requested by it from the official whose decisions, actions or inaction are appealed; the consideration of complaints is often carried out in several court sessions with a significant excess of the 14-day period from the moment of receipt of the complaint[364]. In our opinion, this period is established by the legislator in order to protect the interests of the person filing a complaint with the court, in connection with which it is unacceptable to limit the rights of such a person to prove his position by referring to the limited period for consideration of the complaint.

Thus, when deciding on the performance of a separate investigative or other procedural action, the court must take into account the existence of an objective possibility of obtaining its results for those types of judicial review for which time limits

[364] See, for example: material No. 3/10-8/23 of the Vasileostrovsky District Court of St. Petersburg // archive of the Vasileostrovsky District Court of St. Petersburg; material No. 3/12-39/23 of the Leninsky District Court of St. Petersburg // archive of the Leninsky District Court of St. Petersburg.

for their implementation have been established. If, in order to decide on detention, it is necessary to inspect the scene of the incident, which is located at an insignificant distance from the court building, the court may carry out such an inspection by declaring a break in the court session. When extending the detention period for 72 hours, the court is also authorized to request the necessary items and documents, including from the preliminary investigation body.

In scientific works it is suggested to postpone the court hearing if it is necessary to obtain new evidence. Thus, A.A. Ustinov points out that in case of necessity to ensure the appearance of persons in court for questioning as witnesses it is advisable to announce a break, in extreme cases, to make a decision to postpone the court hearing for a minimum period[365].

The production of forensic examination and investigative experiment, as a rule, require a large amount of time for their preparation and implementation, which may be difficult in the context of limited timeframes for consideration of judicial review proceedings. However, this fact is not a basis for excluding the relevant powers of the court from its competence.

In scientific literature, it is proposed to establish in the Criminal Procedure Code of the Russian Federation the maximum time limits for conducting a forensic examination. In particular, Nuriyev I.N. comes to the conclusion that the initial period for conducting an examination should not exceed 15 days[366]. Considering that court hearings conducted in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation are postponed for a longer period in order to obtain documents, it would be wrong to deny the court the opportunity to appoint an examination solely on the grounds that its production requires sufficient time.

Of significant importance in science and practice is the question of whether evidence obtained during judicial review activities is of significance for the subsequent resolution of the case on the merits.

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[365] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. P.183.

[366] Nuriev I.N. Criminal procedural conditions and means of implementing pre-trial proceedings within a reasonable time: diss. ... Cand. of legal sciences. Khabarovsk, 2021. P.11, 113-114.

T.V. Khmelnitskaya, pointing to the possibility of proof within the framework of judicial review, notes that all facts established by the court can and should have evidentiary value when considering a criminal case in court, and the minutes of the court hearing are a source of evidence[367].

E.A. Ovchinnikova, proposing to supplement the Criminal Procedure Code of the Russian Federation with a new Article 29.1 "Powers of a Judge in Pre-Trial Proceedings", points out the need to secure in it the powers of the court, in the event of documents or other materials being attached to the materials of judicial review proceedings that are of significant importance for establishing the factual circumstances of a criminal case, to send the said materials to the investigator for consideration of the issue of their attachment to the materials of the criminal case as evidence [368]. S.V. Nikitina also notes that if the information obtained during the exercise of judicial review, in the opinion of the court, is of significant importance for establishing the circumstances of the criminal case, then it sends it with its ruling to the preliminary investigation body for consideration of the issue of their attachment to the materials of the inspection or criminal case as evidence. The investigator must issue a ruling on the refusal to accept or on the acceptance of the information sent by the court as evidence. In this case, the official must also be empowered to independently request the relevant information from the court[369].

O. Yu. Tsurluy, in relation to the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, proposes that investigators examine the materials of judicial review proceedings in the presence of witnesses in accordance with the procedure established by Articles 176 and 177 of the Criminal Procedure Code of the Russian Federation, and attach them to the materials of the criminal case as another document[370].

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[367] Khmelnitskaya T.V. Problems of evidence formation during pre-trial proceedings in a criminal case: diss. ... candidate of legal sciences. Nizhny Novgorod, 2016. P.147-148.

[368] Ovchinnikova E.A. Competence of the court, judge in criminal proceedings: theoretical definition and normative consolidation // Gaps in Russian legislation. 2019. No. 7. P. 144.

[369] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.126-127.

[370] Tsurluy O.Yu. Fundamentals of the judicial procedure for considering complaints in the pre-trial stages of criminal proceedings. M., 2013. P.93.

We agree with the above positions regarding the possibility of using the results of judicial review proceedings in proving the main criminal case. At the same time, a survey of practitioners demonstrates a different approach to the problem under consideration. Thus, to the question: "can the evidence obtained by the court during the exercise of judicial review be used as such in the "main" criminal case?", 37.7% of judges, 49% of prosecutors, 36.4% of investigators, 66% of lawyers answered: "yes, they can, by requesting copies of the materials of the judicial review proceedings by the investigator." In turn, 52.5% of judges, 47% of prosecutors, 63.6% of investigators and 30% of lawyers answered: "no, they cannot, since evidence can only be collected by the person conducting the criminal prosecution, and parallel collection of evidence by the investigator/inquiry officer and the court is not allowed; the official should independently conduct the investigative action performed by the court." Some respondents found it difficult to answer this question. Other answer options were also given[371]. Thus, the position of practitioners was divided approximately in half, which indicates the lack of unity in resolving the problem in practice and emphasizes its relevance.

The question arises about the admissibility of dualism in the evidentiary process, when, for example, the taking of testimony from the same person, the inspection of the same object are carried out by different subjects of proof (the investigator and the court) in parallel.

It should be noted that the very fact of parallel evidence collection is not something new for domestic criminal proceedings. Thus, when deciding on the issue of giving the investigator consent to initiate a motion before the court to select a preventive measure or to permit the conduct of an investigative action, the head of the investigative body has the right to personally interrogate the suspect, the accused without accepting the criminal case for his own proceedings (clause 4, part 1, article 39 of the Criminal Procedure Code of the Russian Federation). At the same time, scientific literature notes that the corresponding actions of the head of the investigative body to collect and verify evidence

[371] See Appendices No. 1-4.

also imply that he has the authority to "evaluate evidence without accepting the criminal case for proceedings" [372].

A provision similar to paragraph 4 of Part 1 of Article 39 of the Criminal Procedure Code of the Russian Federation was contained in Articles 96 and 211 of the Criminal Procedure Code of the RSFSR of 1960, which stipulated that when deciding on an arrest warrant, the prosecutor was obliged to carefully review all materials containing grounds for detention and, if necessary, personally interrogate the suspect or accused, and a minor suspect or accused - in all cases[373]. A criminal investigator has the right to carry out individual investigative and other procedural actions without accepting a criminal case for his own proceedings (paragraph 40.1 of Article 5 of the Criminal Procedure Code of the Russian Federation).

Thus, the receipt of evidence, as well as its assessment by different subjects of proof, including those who have not accepted the case for their proceedings, during the investigation of one criminal case is permissible[374], which also indicates the possibility of using evidence obtained by the court during judicial review in proving the main criminal case.

In our opinion, the investigator during pre-trial proceedings, as well as the court when considering a criminal case on the merits, have the right to request materials from judicial review proceedings for their use in the process of proof. At the same time, imposing on the court the obligation to send the obtained evidence to the investigator on its own initiative is unacceptable, since this would turn the court into a criminal prosecution body, the exclusive competence of which includes the formation of materials from the pre-investigation check and the criminal case. It should also be noted that the investigator is not deprived of the opportunity to independently carry out the appropriate investigative or other procedural action carried out by the court (interrogate a witness, inspect the scene of the incident, etc.).

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[372] Makhtyuk S.O. Head of the investigative body as a subject of evidence assessment in Russian criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Moscow, 2024. Pp. 14-15.
[373] Criminal Procedure Code of the RSFSR of 1960 // RLS "Consultant Plus".
[374] See also: Lukianov S.S. Determining the court’s competence to participate in the process of proof while implementing judicial control at pre-trial stages of criminal proceedings // Russian judge. 2024. No. 2. P. 39.

§3. The competence of the court to make procedural decisions

One of the key issues of the court's competence in the exercise of judicial review at the pre-trial stages of criminal proceedings is the correct determination of the types and grounds for making procedural decisions.

M.A. Barova defines a court decision in pre-trial proceedings as a criminal procedural act of the court (judge) adopted in pre-trial proceedings on a criminal case, expressed in the procedural form and procedure for issuing established by law, reflecting the answers to legal questions that have arisen in the criminal case, aimed at individual regulation of public relations, ensuring guarantees of the rights, freedoms and legitimate interests of participants in criminal proceedings, ensuring the unimpeded conduct of the preliminary investigation and further judicial proceedings[375]. Other definitions of this concept are also proposed in scientific literature[376].

The system of types and grounds for making decisions by the court when implementing judicial review is not defined by law. At the same time, scientific works make proposals to consolidate in law the powers of the court to make individual procedural decisions.

In particular, A.S. Chervotkin, advocating for a unified procedure for making interim court decisions, proposes to legislatively establish the powers of the court to make the following types of decisions based on the results of reviewing appeals: “to satisfy the appeal or to refuse to satisfy the appeal, unless otherwise provided by law” [377].

O.O. Avakov proposes to provide in the law the powers of a judge to return to an official a notification submitted in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, in the event of its non-compliance with the

[375] Barova M.A. Criminal procedural mechanism for making judicial decisions in pre-trial proceedings: diss. ... candidate of legal sciences. Moscow, 2014. P.13.
[376] See, for example: Podolsky M.A. Court decisions in pre-trial proceedings in a criminal case (theoretical and practical issues): diss. ... candidate of legal sciences. Ekaterinburg, 2007. P. 11.
[377] Chervtokin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2013. P.203.

requirements of the law, and to refuse to accept it if the official does not have the necessary powers[378].

M.A. Podolsky[379] and A.I. Laliev[380] note the need to enshrine in the law the powers of the court to terminate proceedings on a complaint filed in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation and to leave it without consideration. P.A. Lutsenko proposes to provide in the said article the possibility of the court to terminate proceedings on a complaint and refuse to accept it for consideration[381]. S.V. Rudakova believes it is necessary to enshrine in the Criminal Procedure Code of the Russian Federation the powers of the court to make a decision to return a complaint in order to eliminate obstacles to its consideration[382]. According to E.A. Sukolenko, the court must leave the complaint without satisfaction if it does not contain information about the grounds provided by law as circumstances of the violation[383].

S.V. Nikitina, with regard to the court's decision on the measure of restraint, proposes to provide by law that in the event of the absence of the necessary materials, the judge, during preparation for the court hearing, has the right to oblige the preliminary investigation bodies to provide the missing materials. If they are absent by the beginning of the court hearing, the petition should be considered not filed[384]. I.L. Petrukhin notes that a judge should have the right to return petitions of officials, including those on the application of criminal procedural coercion measures and on granting permission to conduct investigative actions, for additional justification[385]. A.A. Endoltseva points out the possibility of returning a petition on the application of a preventive measure without

[378] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.13.
[379] Podolsky M.A. Court decisions in pre-trial proceedings in a criminal case (theoretical and practical issues): diss. ... candidate of legal sciences. Ekaterinburg, 2007. P. 180.
[380] Laliev A.I. Problems of judicial appeal of actions (inaction) and decisions of preliminary investigation bodies: diss. ... candidate of legal sciences. Krasnodar, 2011. P.12, 163.
[381] Lutsenko P.A. Judicial review in pre-trial stages of criminal proceedings of the Russian Federation: author's abstract. dis. ... candidate of legal sciences. Moscow, 2014. P.9.
[382] Rudakova S.V. Criminal procedural appeal and its system in domestic pre-trial proceedings: dis. ... Doctor of Law. Krasnodar, 2023. P.343, 358.
[383] Sukolenko E.A. Court as a subject of criminal procedural legal relations in pre-trial criminal proceedings: diss. ... candidate of legal sciences. Rostov-on-Don, 2011. P.8-9.
[384] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.176.
[385] Petrukhin I.L. Judicial power: control over the investigation of crimes. Moscow, 2008. P.131-132.

consideration, if, for example, consent to its initiation was given by an inappropriate person[386].

In the scientific literature, attempts have been made to classify the types and grounds for making judicial decisions in pre-trial proceedings. For example, M.A. Podolsky classifies judicial decisions in pre-trial proceedings depending on the nature of the judicial procedures in which they are made[387]. The author divides judicial decisions made in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation into decisions made when appealing procedural actions and decisions made when appealing procedural decisions of officials[388].

A.N. Ryzhikh, in relation to the consideration of complaints from participants in criminal proceedings, proposes to establish in the Criminal Procedure Code of the Russian Federation the authority to make the following types of decisions:

- a decision to leave the complaint without action and set a deadline for correcting the deficiencies (if the complaint does not meet the requirements for its form and content);

- a decision to return the complaint (if the specified deficiencies are not corrected within the specified time);

- a decision to transfer the complaint to the appropriate jurisdiction;

- a decision to refuse to accept a complaint (if the criminal case has been transferred to the prosecutor with an indictment, if the complaint has been filed by an inappropriate subject or is not subject to consideration at all in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation);

- a decision to terminate proceedings on a complaint (if, after the complaint has been accepted for proceedings, the complaint is withdrawn, the criminal case is terminated, or the contested decision is overturned).

In the absence of circumstances that prevent the consideration of the complaint, the court must issue a ruling on accepting the complaint for proceedings[389].

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[386] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: diss. ... Cand. of legal sciences. Moscow, 2023. P.128, 146.
[387] Podolsky M.A. Court decisions in pre-trial proceedings in a criminal case (theoretical and practical issues): diss. ... candidate of legal sciences. Ekaterinburg, 2007. Pp. 11-12, 63-66.
[388] Ibid. P.14, 180.
[389] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Ekaterinburg, 2008. P.139-140.

S.S. Kripinevich substantiates the need for legislative consolidation of the court's powers to make procedural decisions in various types of judicial review. Thus, at the stage of preparation for a court hearing on granting permission to carry out an investigative action, the court, in the author's opinion, should be authorized to make the following types of decisions:

- a decision to refuse to accept a petition (for example, due to a violation of the rules of jurisdiction);

- a decision to leave the petition without consideration (for example, if there is no subject for a judicial decision);

- a decision to return the petition (to eliminate the deficiencies that prevent its consideration, by which the author understands the incompleteness, unreasonableness of the petition, violation of the approval procedure).

At the stage of preparation for consideration of a petition for a preventive measure, S.S. Kripinevich points out the need, upon identification of deficiencies that prevent the consideration and resolution of such a petition, to refuse to accept it for proceedings or leave it without consideration until the violations committed are corrected.

At the stage of preparation for consideration of a complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, if its content or form does not comply with the requirements established by law, the court must be empowered to make a decision to return the complaint, to leave it without consideration, or to refuse to accept it[390].

The approaches presented do not exhaust the views of the scientific community on the types and grounds for making decisions within the framework of judicial review. However, such approaches are usually limited to a certain type of judicial review. Thus, the system of types and grounds for making judicial decisions in the implementation of judicial review is not sufficiently defined.

As our generalization of judicial practice has shown, when implementing judicial review in the form of considering petitions of officials to select a preventive measure in

[390] Kripinevich S.S. Institute of preparation for a court hearing and forms of its implementation in the pre-trial stages of criminal proceedings of the Russian Federation: diss. ... Cand. of legal sciences. Moscow, 2019. Pp. 17-19.

the form of detention, the courts in 100% of cases made a decision on the merits of the submitted petition. In 87.4% of cases, the courts granted the relevant petition, in 9.6% of cases they refused to grant it, in 3% of cases there was a refusal to detain a person with the selection of a more lenient preventive measure[391].

When the court checked the legality of the search, it was found to be legal in 94.6% of cases and illegal in 4.8% of cases[392]. Only in one case (0.6%) was there a refusal to accept the investigator's notice for consideration due to the absence of a subject for consideration[393]. The survey of lawyers showed that in their practice, in 66% of cases, the court never found the investigative action to be illegal, 30% answered that it was rarely found, and 4% - often[394].

With regard to preliminary judicial review under Article 165 of the Criminal Procedure Code of the Russian Federation, other categories of practitioners indicated that in their practice, cases of refusal by an official to grant permission to carry out an investigative action on the grounds of the unreasonableness of the stated petition did not occur in 9.8% of cases (judges), in 32% of cases (prosecutors), in 61.8% of cases (investigators) or occurred rarely in 83.6% of cases (judges), 65% of cases (prosecutors), 34.6% of cases (investigators). Accordingly, 6.6% of judges, 2% of prosecutors and 0% of investigators indicated that the court often refused to grant permission to carry out an investigative action. Other answers were also encountered[395].

With regard to such type of judicial review as consideration of complaints against actions (inaction) and decisions of officials authorized to carry out criminal prosecution, a summary of judicial practice showed that courts considered complaints on the merits in only one quarter of cases (26.4%). At the same time, of all complaints considered on the merits, courts satisfied them in full only in 13.6% of cases, and partially in 6.8% of cases. The majority of decisions taken on the merits refused to satisfy the complaint - 79.6%.

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[391] See Appendix No. 5.
[392] See Appendix No. 7.
[393] Resolution of the Nevsky District Court of St. Petersburg dated September 16, 2021 based on material No. 3/3-312/2021 (see Appendix No. 10).
[394] See Appendix No. 1.
[395] See Appendices No. 2-4.

In the remaining cases, when the complaint was not considered on its merits, either the proceedings on it were terminated (22.8% of the total number of complaints considered), or it was refused acceptance for consideration/proceedings (34.1%), or the complaint was returned to the applicant (15.6%), or it was sent to the appropriate jurisdiction (3.6%).

The grounds for courts to make decisions not on the merits of the complaints filed varied. The most common ground was the elimination of the violation committed by the investigator, inquiry officer, head of the investigative body or prosecutor (33.9% of the number of decisions made not on the merits of the complaint). However, these statistics in themselves cannot testify to the ineffectiveness of this type of judicial review, since, as follows from the position of A.A. Maksurov, an appeal to the court in such situations serves as a kind of incentive for the implementation of departmental control or prosecutorial supervision[396].

In 22.8% of cases, the courts cited the absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation as the basis for making a decision not on the merits of the complaint, in 12.6% of cases - the fact that it is impossible to establish from the content of the complaint the presence of a subject of appeal provided for by law or that the complaint does not contain the necessary information, which prevents its consideration, in 5.5% - the lack of jurisdiction of the complaint to a specific court, in 3.1% - the fact that the criminal case was sent to the court for consideration on the merits, in 4.7% - the fact that the complaint was filed by an unauthorized person or was not signed, in 2.4% - the fact that a complaint with the same subject and grounds is pending in court or a court decision has already been made on it, etc. 12.6% of decisions not on the merits of the complaint were made in connection with its withdrawal by the applicant[397].

In some cases, the court ruling adopted following the consideration of the complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation contained two types of decisions at the same time: on the merits of the

[396] Maksurov A.A. Judicial review at the pre-trial stage of criminal proceedings. M., 2023. P. 84.
[397] See Appendix No. 6.

complaint and not on the merits. For example, the operative part of the ruling of the Preobrazhensky District Court of Moscow dated 21.02.23, issued on material No. 3/12-0004/2023, states: "the proceedings on the complaint filed by the applicant - the general director of LLC "..." FULL NAME in the part obliging the investigator to issue a writ of execution - shall be terminated. The complaint of the general director of LLC "..." FULL NAME, filed in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, in the part on recognizing as illegal the decision of the senior investigator <...> on the refusal to satisfy the petition filed in criminal case No. ... - shall be dismissed" [398].

There were also cases when the courts made different decisions on the same grounds. For example, when eliminating a violation by an official, the courts, as a rule, terminated proceedings on the complaint due to the disappearance of the subject of the appeal, but in a number of cases the courts made a decision on the merits - they refused to satisfy the submitted complaint[399] or satisfied it[400]. In some cases, in the event of eliminating the violation, the courts clarified the position of the applicant regarding the possibility of terminating proceedings on the complaint. In the absence of objections, the courts made a decision to terminate proceedings on it[401].

The courts, as a rule, fulfilled the obligation, stipulated by paragraph 8 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 "On the practice of consideration by courts of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation", to accept for consideration complaints against decisions that were repeatedly overturned by the head of the investigative body or the prosecutor, with the subsequent issuance of a similar

[398] See Appendix No. 9.
[399] See, for example: the ruling of the Preobrazhensky District Court of Moscow dated 20.01.2023 based on material No. 3/12-0023/2023, the ruling of the Preobrazhensky District Court of Moscow dated 10.02.2023 based on material No. 3/12-0024/2023 (Appendix No. 9).
[400] See, for example: the ruling of the Butyrsky District Court of Moscow dated 21.12.2022 based on material No. 3/12-0132/2022 (Appendix No. 9).
[401] See, for example: decisions of the Nevsky District Court of St. Petersburg, issued based on materials No. 3/10-238/2022, 3/10-261/2022 (Appendix No. 9).

decision by the investigator (inquiry officer)[402]. At the same time, there were cases of refusal to accept such complaints for consideration[403].

In the absence of a subject of appeal, as provided for in Article 125 of the Criminal Procedure Code of the Russian Federation, the courts, as a rule, refused to accept the complaint for proceedings, however, there were decisions by which the courts returned such a complaint to the applicant[404]. Cases were found when, in the absence of a subject of appeal, the courts considered such complaints on the merits. For example, by the ruling of the Nevsky District Court of St. Petersburg dated 03.11.2022, issued on the basis of material No. 3 / 10-257 / 2022, the complaint filed against the decision to appoint an expert examination and the decision to refuse to satisfy the motion to exclude the expert opinion from the criminal case were rejected[405]. According to another material No. 3 / 10-96 / 2023, the Frunzensky District Court of St. Petersburg accepted for proceedings a complaint about the improper conduct of the preliminary investigation, the proceedings on which were terminated only in connection with its withdrawal by the applicant[406].

If there was a subject for appeal, the courts, as a rule, considered such complaints on the merits. At the same time, there were cases in which the court, actually assessing the arguments of the complaint on the merits, came to the conclusion that there was no illegal inaction, but did not refuse to satisfy the complaint, but terminated the proceedings on it[407] or refused to accept it for consideration[408]. For example, in the ruling of 17.07.2023, issued on material No. 3 / 10-60 / 2023 on the complaint about the inaction of the investigator in checking the report of a crime, the Frunzensky District Court of St. Petersburg, having come to the conclusion that illegal inaction was not committed, since

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[402] See, for example: the resolution of the Frunzensky District Court of St. Petersburg dated 20.10.2023 based on material No. 3/10-82/2023, the resolution of the Pushkinsky District Court of St. Petersburg dated 01.11.2023 based on material No. 3/12-82/2023 (Appendix No. 9).

[403] See, for example: the ruling of the Pushkinsky District Court of St. Petersburg, issued on material No. 3/12-50/2023 (Appendix No. 9).

[404] See, for example: the ruling of the Nevsky District Court of September 12, 2022 based on material No. 3/10-236/2022, the ruling of the Butyrsky District Court of Moscow of September 22, 2022 based on material No. 3/12-0116/2022 (Appendix No. 9).

[405] See Appendix No. 9.

[406] See Appendix No. 9.

[407] See, for example: the ruling of the Preobrazhensky District Court of Moscow dated 30.01.2023 on material No. 3/12-0025/2023 (Appendix No. 9).

[408] See, for example: Pushkinsky District Court of St. Petersburg, issued on material No. 3/12-53/2023 (Appendix No. 9).

the investigators took all the necessary measures to check the report of a crime, refused to accept the complaint for consideration[409].

Referral of a criminal case to court for consideration on the merits usually resulted in the termination of proceedings on the complaint, but in some cases the courts returned such a complaint to the applicant[410].

Filing a complaint in violation of the rules of jurisdiction entailed both the referral of the material to the jurisdiction[411], including after the complaint had been accepted for proceedings[412], and a refusal to accept the complaint for consideration[413], as well as a refusal to satisfy it[414].

Thus, the results of the generalization of practice showed that it is internally contradictory both in terms of types and in terms of the grounds for the adoption of procedural decisions by the court, which in this regard require systematization.

The legislator defines a final court decision as a sentence or other court decision issued during a trial, by which a criminal case is resolved on its merits (clause 53.2, Article 5 of the Criminal Procedure Code of the Russian Federation). The Plenum of the Supreme Court of the Russian Federation interprets this provision broadly and classifies as final decisions also court rulings and orders that are not made on the merits of a criminal case, but by issuing which the proceedings on it with respect to a specific person are completed, for example, a ruling to terminate a criminal case[415]. Interim decisions include all court rulings and orders, with the exception of a final court decision (clause 53.3, Article 5 of the Criminal Procedure Code of the Russian Federation). Thus, the

[409] See Appendix No. 9.
[410] See, for example: the ruling of the Butyrsky District Court of Moscow dated September 6, 2022 based on material No. 3/12-0107/2022 (Appendix No. 9).
[411] See, for example: the ruling of the Lyublinsky District Court of Moscow dated 20.01.2023 on material No. 3/12-0005/2023 (Appendix No. 9).
[412] See, for example: the ruling of the Frunzensky District Court of St. Petersburg, issued on material No. 3/10-74/2023 (Appendix No. 9).
[413] See, for example: the ruling of the Izmailovsky District Court of Moscow dated 02/09/2023 based on material No. 3/12-0014/2023 (Appendix No. 9).
[414] See, for example: the ruling of the Butyrsky District Court of Moscow dated September 23, 2022 based on material No. 3/12-0095/2022 (Appendix No. 9).
[415] Clause 4 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 27.11.2012 No. 26 “On the application of the norms of the Criminal Procedure Code of the Russian Federation regulating proceedings in the court of appeal” // RLS “Consultant Plus”.

criterion for this classification is the relationship of the court decision to the outcome of the criminal case itself.

A.S. Chervotkin defines interim court decisions as auxiliary court decisions aimed at creating appropriate conditions for the implementation of legal proceedings, adopted in compliance with the procedures provided by law during criminal proceedings, recorded in procedural form, not resolving criminal cases on the merits and subject, as a rule, to immediate execution. The author divides such decisions into those issued at pre-trial stages, during trial (interim decisions in the proper sense of the word) and at the stage of execution of the sentence[416]. Other classifications of interim court decisions are also proposed in science[417].

Judicial decisions made by the court in the exercise of judicial review, according to the criterion of their attitude to its results, should be divided into intermediate and final.

Final decisions are thus decisions that conclude the consideration or block further movement of a complaint or petition. The need to indicate blocking further movement is due to the fact that if a complaint or petition is refused, the proceedings on them are not completed, since they have not yet begun. For the stage of judicial proceedings, this addition is superfluous, since the court cannot refuse to accept a criminal case, it can only return it to the prosecutor.

Final decisions should be divided into decisions taken on the merits of the complaints and petitions filed, and decisions taken not on the merits of the complaints and petitions filed.

Interim decisions are decisions that do not complete the consideration and do not block further progress of the complaint or petition.

Let us turn to the provisions of the current legislation regulating the powers of the court to make final judicial decisions on the merits of the main judicial review proceedings.

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[416] Chervotkin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2013. Pp. 8-9.

[417] See, for example: Gertsen P.O. Implementation of the right to appeal and review of interim court decisions made during pre-trial proceedings: ensuring a balance of private and public interests: diss. ... Cand. of legal sciences. Tomsk, 2023. Pp. 44-45.

According to Part 5 of Article 125 of the Criminal Procedure Code of the Russian Federation, based on the results of examining a complaint, the court is authorized to make the following types of decisions:

- a decision to recognize the action (inaction) or decision of the relevant official as illegal or unfounded and on his obligation to eliminate the violation committed;

- a decision to dismiss the complaint.

In recognizing the relevant action (inaction) or decision as illegal or unfounded, the court has no right to give instructions on how to eliminate the violation committed, has no right to predetermine the actions of the official conducting the preliminary investigation, or to cancel or oblige him to cancel the decision recognized by him as illegal or unfounded[418]. The court may partially satisfy the complaint, for example, only in part of the stated requirements[419].

As our review of judicial practice has shown, courts, as a rule, literally interpret the provision of paragraph 1, part 5, Article 125 of the Criminal Procedure Code of the Russian Federation, believing that an action (inaction) or decision of an official may be recognized as illegal or unfounded only with the simultaneous establishment of the obligation of such person to eliminate the violation committed. Such an interpretation is used by courts to argue that it is impossible to consider a complaint on the merits if an official eliminates the violation committed after it has been filed, since the obligation imposed by the court to eliminate the violation already eliminated is impossible to fulfill. For example, according to material No. 3/12-0007/2023, the Lyublinsky District Court of Moscow dismissed the complaint on the given grounds, stating that "the provisions of Article 125 of the Criminal Procedure Code of the Russian Federation inextricably link the recognition of the actions (inactions) of officials as illegal with the imposition on them of the obligation to eliminate the violations committed" [420].

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[418] Clause 21 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 “On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

[419] See, for example: the appellate ruling of the Moscow City Court dated 25.01.2022 in case No. 10-1260/2022 // RLS "Consultant Plus".

[420] See Appendix No. 9.

Clause 21 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 “On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation” also states that when recognizing an action (inaction) or decision of an official as illegal or unfounded, “the judge should indicate that he obliges this official to eliminate the violation committed” [421].

We cannot agree with the approach given, since it contradicts the nature of judicial review, reducing its essence to the obligation of preliminary investigation bodies to eliminate the violations committed. The need for judicial recognition of the fact of violation of the applicant's rights may have an independent procedural significance, for example, in a situation where the contested decision is cancelled by way of departmental review or prosecutorial supervision not due to its illegality or groundlessness.

Thus, the court may oblige an official to eliminate the violation committed only if such a decision is actually enforceable. In other cases, the court should limit itself to recognizing the actions (inaction) or decisions of such an official as illegal or unfounded. Such a court decision, if the complaint contains a request to oblige the official to eliminate the violation committed, will be a decision to partially satisfy it. The wording of Part 5 of Article 125 of the Criminal Procedure Code of the Russian Federation, in our opinion, is subject to change.

According to Part 4 of Article 165 of the Criminal Procedure Code of the Russian Federation, when considering petitions from officials for permission to carry out investigative actions, the court is authorized to make the following types of decisions:

- a decision to permit the conduct of an investigative action;

- a decision to refuse to carry out an investigative action.

According to Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, when considering notifications from officials about investigative actions

[421] Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 “On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation” // RLS “Consultant Plus”.

carried out in urgent cases, the court is authorized to make the following types of decisions:

- a decision to recognize the investigative action carried out as legal;

- a decision to recognize the investigative action taken as illegal.

In our opinion, the court may partially satisfy a petition filed in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation. This is permissible, for example, when filing a petition for permission to conduct searches at various addresses. Such cases are known to judicial practice[422].

According to the provisions of Articles 105.1, 107, 108 of the Criminal Procedure Code of the Russian Federation[423], when considering petitions from officials to select a preventive measure, the court is authorized to make the following types of decisions:

- a decision to satisfy the official's petition to select the requested preventive measure;

- a decision to refuse to satisfy the petition.

With regard to the consideration of petitions for the application of a ban on certain actions, paragraph 2, part 4, article 105.1 of the Criminal Procedure Code of the Russian Federation provides for the possibility of making a decision on the imposition of additional bans on the accused, in respect of whom a preventive measure in the form of a ban on certain actions has been applied. This decision cannot be classified as a separate type, since it does not compete with the decision on the selection of a ban on certain actions and is made at the independent request of the investigator.

In the list of decisions that the court may make, "having considered the petition", Part 7 of Article 108 of the Criminal Procedure Code of the Russian Federation provides a decision to extend the detention period for no more than 72 hours. In our opinion, classifying this type of decision as final is incorrect, since extending the detention period

[422] See, for example: the ruling of the Leninsky District Court of St. Petersburg dated 12.12.2023 based on material No. 3/6-366/2023 // archive of the Leninsky District Court of St. Petersburg.

[423] We do not take bail (Article 106 of the Criminal Procedure Code of the Russian Federation) into account in the specified list due to the fact that, having a special legal nature, it is, in essence, a substitute measure of restraint in relation to other measures. In particular, P.V. Vdovtsev points out: "the wording of Part 2 of Article 106 of the Criminal Procedure Code of the Russian Federation allows us to conclude that only the defense may apply to the court with a motion to choose bail" (see: Vdovtsev P.V. Some problematic issues of using bail as a preventive measure // Investigation of crimes: problems and ways to solve them. 2016. No. 3 (13). P. 84).

does not complete the judicial review proceedings and requires postponing the court hearing. This type of decision is considered interim.

It is also necessary to agree with the position of Kvyk A.V. that the court is authorized to make a decision on extending the detention period not only at the request of the party, as specified in paragraph 3 of Part 7 of Article 108 of the Criminal Procedure Code of the Russian Federation, but also on its own initiative[424]. Such a decision may be made by the court, for example, for the purpose of carrying out the necessary investigative or other procedural action. Thus, the wording of Part 7 of Article 108 of the Criminal Procedure Code of the Russian Federation is incorrect and is subject to change.

Our generalization of judicial practice showed that when refusing to satisfy the investigator's petition, the courts only in 38.1% of cases indicated in the operative part of the decision the immediate release of the accused from custody; 6–1.9% of decisions did not contain such an indication[425].

In our opinion, this inconsistency of practice is connected with the absence of a provision in the law that a court decision to refuse to detain a person must contain an indication of his immediate release from custody. At the same time, paragraph 2 of clause 13 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 "On the practice of applying the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions by the courts" states that if the court refuses to satisfy a petition to choose detention as a preventive measure, the suspect or accused is subject to immediate release from custody regardless of whether the 48-hour period has expired from the moment of his detention, except in the case of the court choosing a preventive measure in the form of bail. Also, by Federal Law No. 340-FZ of 02.10.2024, Part 2 of Article 110 of the Criminal Procedure Code of the Russian Federation was supplemented with a provision stating that "in the event of the cancellation of a preventive measure in the form of detention, the suspect or accused is subject to immediate release from custody" [426].

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[424] Kvyk A.V. Preventive measures chosen on the initiative of the court at the stage of preliminary investigation: dis. ... candidate of legal sciences. Moscow, 2023. P. 63.
[425] See Appendix No. 5.
[426] Federal Law of 02.10.2024 No. 340-FZ "On Amendments to Article 78.1 of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation" // RLS "Consultant Plus".

In this regard, it should be concluded that the operative part of a court decision to refuse to detain a person, as well as to cancel this preventive measure, must contain an indication of his immediate release from it (except in the case of choosing a preventive measure in the form of bail), which will fully comply with the legal nature of this type of decision and eliminate legal uncertainty in the position of the person in respect of whom it was issued.

The question arises as to what type of decision is the choice of a more lenient preventive measure than that requested by the official.

If such a decision is made, the courts indicate the following in the operative part of their rulings: "to deny the investigator's petition, to choose a preventive measure in the form of house arrest, bail, or a ban on certain actions against the suspect or accused." If the corresponding petition was filed by the defense, the courts add: "to grant the petition of the defense" [427].

Our analysis of judicial practice showed that when the court selects a more lenient measure of restraint than requested by the investigator, the courts issue a decision to refuse to satisfy his petition. In none of the judicial acts we studied did the courts indicate partial satisfaction of the investigator's petition when selecting a more lenient measure of restraint[428]. Partial satisfaction of the petitions of officials took place only when a measure of restraint was selected for a shorter period than requested[429].

The results of the survey of judges, in turn, showed that when choosing a more lenient preventive measure for a suspect/accused than requested, 6.6% of judges indicate in the operative part of their decisions "partial satisfaction of the petition" of the official. Accordingly, 93.4% indicate in such a case "denial of satisfaction of the petition" of the official[430].

In our opinion, such practice is based on a literal interpretation of the provisions of the current legislation. In particular, Part 7.1 of Article 108 of the Criminal Procedure

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[427] See, for example: the ruling of the St. Petersburg City Court dated October 27, 2021 based on material No. 3/2-460/2021 // archive of the St. Petersburg City Court.
[428] See Appendix No. 5.
[429] See, for example: the ruling of the Pushkinsky District Court of St. Petersburg dated 07.08.23, issued based on material No. 3/1-98/23, the ruling of the Nevsky District Court of St. Petersburg dated 28.12.21, issued based on material No. 3/1-493/21 (Appendix No. 8).
[430] See Appendix No. 4.

Code of the Russian Federation establishes the right of the court to choose, on its own initiative, a more lenient measure of restraint precisely in the event of a "refusal to satisfy the petition of an official". Similar provisions are contained in Part 5 of Article 107 and paragraph 2 of Part 8 of Article 109 of the Criminal Procedure Code of the Russian Federation.

It is necessary to determine whether the said court decision is a type of decision to refuse to satisfy the official's petition, a decision to partially satisfy it, or refers to a third, independent type of decision.

O. G. Ivanova classifies the decision under consideration as a decision to refuse to satisfy the investigator's petition, noting that the court may make it on its own initiative[431]. A. V. Kvyk distinguishes the refusal to satisfy the petition of an official to select a preventive measure with the simultaneous selection of a more lenient preventive measure as a separate type of decision. The author points out that this decision may also be made by the court on its own initiative, which does not indicate a confusion of the functions of the participants in criminal proceedings[432].

E.V. Vovk, on the contrary, points out that the legislative establishment of the possibility of the court's initiative selection of an alternative measure of restraint to detention in the event of a refusal to satisfy the corresponding petition violates the principle of adversarial proceedings and imposes on the court the function of criminal prosecution, in connection with which, in the author's opinion, another measure of restraint can be selected exclusively at the request of the parties[433].

We cannot agree with the above positions. In our opinion, the decision to choose a more lenient preventive measure than requested is a type of decision to satisfy the official's petition, which is satisfied in such a case partially. This decision can be made by the court both at the request of the parties and on its own initiative. This conclusion is due to the following.

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[431] Ivanova O.G. Criminal procedure proceedings for the court's selection of a preventive measure: criminal procedure form and features of proof: dis. ... candidate of legal sciences. Krasnoyarsk, 2019. P.16.

[432] Kvyk A.V. Preventive measures chosen on the initiative of the court at the stage of preliminary investigation: diss. ... Cand. of legal sciences. Moscow, 2023. Pp. 10, 11, 71, 134.

[433] Vovk E.V. The principle of justice in judicial activity: author's abstract. dis. ... candidate of legal sciences. Rostov-on-Don, 2024. P.13.

Just as any procedural decision is individualized by its subject and basis, the investigator's decision to initiate a petition for the selection or extension of the period of validity of a preventive measure is individualized by a request addressed to the court on the need to apply a specific preventive measure (subject) and the grounds for its selection or extension of the period of validity (Article 97 of the Criminal Procedure Code of the Russian Federation).

The court's selection of a more lenient preventive measure at the request of an official does not mean the court's agreement with the subject matter, but agreement with the grounds for the petition on the need to apply a preventive measure as such, in connection with which such a court decision cannot be considered a decision to refuse to satisfy the official's petition, just as the decision of the appellate court to transfer a criminal case for a new trial to the court of first instance, issued on the basis of a complaint by the defense containing a request for the acquittal of the convicted person, is a decision on "partial satisfaction of the appeal" [434].

The procedural purpose of a petition for a preventive measure is to ensure the normal course of criminal proceedings. If the court finds the investigator's arguments about the existence of grounds for choosing a preventive measure as such justified, then the court thereby finds the purpose of the petition procedurally justified, which also does not allow us to talk about refusing to satisfy the investigator's petition.

In addition, if the court's decision to choose a more lenient preventive measure for the accused were made by the court in the event of a refusal to satisfy the investigator's motion (in fact, in the absence of the investigator's request, which is the reason, the prerequisite for initiating judicial review proceedings), this would mean that the court, on its own initiative, chooses a preventive measure for the accused at the pre-trial stage of the criminal process, which is only possible at the trial stages (Article 255 of the Criminal Procedure Code of the Russian Federation, Part 10 of Article 108 of the Criminal Procedure Code of the Russian Federation), would be in conflict with the principle of

[434] See, for example: appellate ruling of the Leningrad Regional Court dated 02.11.2022 in case No. 22-1661/2022 // archive of the Lodeynoye Pole City Court of the Leningrad Region.

adversarial proceedings and would turn the court into a criminal prosecution body, which is unacceptable.

The selection of a more lenient preventive measure than requested at the request of the defense does not affect the conclusions made. The corresponding motions of the defense are perceived in practice as independent, which is also indicated by the wording of the operative parts of court decisions: to deny the investigator's motion, to satisfy the defendant's motion[435]. In science, it is also proposed to enshrine in law the right of the parties to file counter-motions during judicial review proceedings[436].

In our opinion, the above practice is erroneous, and the motions for choosing a more lenient preventive measure are neither independent nor counter. Firstly, such motions of the defense are not an independent reason for initiating judicial review proceedings. They are motions within the meaning of Article 119 of the Criminal Procedure Code of the Russian Federation (the subjects of which do not include officials of the preliminary investigation bodies), but are not motions within the meaning of Articles 105.1, 107, 108, 109 of the Criminal Procedure Code of the Russian Federation. Secondly, the restriction of the constitutional rights of the accused at the request of the defense contradicts the nature of the criminal procedural function of the defense.

Thus, a motion to select a more lenient preventive measure is, in essence, the position of the defense, which consists of disagreement with the subject of the investigator’s motion while agreeing with its grounds, that is, the need to select a preventive measure as such.

It should be noted that the question of classifying the decision under consideration as a certain type is not purely theoretical. The practical significance of the problem posed is manifested in various aspects related to the need to implement departmental control over the legality and validity of the investigator's petitions for the selection of preventive measures (which are either satisfied or not), with determining the degree of guilt of officials who carried out the criminal prosecution, when determining the amount of

[435] See, for example: the ruling of the St. Petersburg City Court dated 10/27/2021 based on material No. 3/2-460/21 // archive of the St. Petersburg City Court.
[436] See, for example: Petrovets V.M. Forms and limits of court resolution of issues in pre-trial proceedings in Russian criminal proceedings: diss. ... candidate of legal sciences. Tyumen, 2007. P.18.

damage to be compensated to the rehabilitated person (in cases where guilt can be established), etc. Of course, the requirement of consistency of the judicial act as an element of its legal force is also important.

Thus, in our opinion, the court is authorized to make two types of decisions on petitions for the selection of preventive measures: to satisfy the petition of the official and to select the requested preventive measure or a more lenient, but not lenient, ban on certain actions; to refuse to satisfy the petition of the official.

Article 109 of the Criminal Procedure Code of the Russian Federation, unlike Article 108 of the Criminal Procedure Code of the Russian Federation, does not specify the types of decisions that may be made by the court based on the results of consideration of the investigator's petition to extend the period of detention. An exception is the consideration by the court of a petition filed in accordance with Part 8 of Article 109 of the Criminal Procedure Code of the Russian Federation to extend the period of detention at the stage of fulfilling the requirements of Article 217 of the Criminal Procedure Code of the Russian Federation when the 30-day period for familiarization of the accused and his defense attorney with the case materials is insufficient. For this situation, the legislator has established two types of court decisions:

- a decision to extend the period of detention for a period necessary for the accused and his defense attorney to complete familiarization with the materials of the criminal case, referral of the criminal case to the prosecutor with the indictment, indictment, indictment or decision to refer the criminal case to the court for the application of a compulsory medical measure, as well as for the prosecutor and the court to make decisions on the received criminal case;

- a decision to refuse to satisfy the investigator's petition and release the accused from custody, while the court may choose another preventive measure, but not less lenient than the prohibition of certain actions.

The above provision of Part 8 of Article 109 of the Criminal Procedure Code of the Russian Federation shall also apply to ordinary cases of extension of the period of detention, as well as house arrest and prohibition of certain actions (in terms of prohibition

of leaving residential premises), the application procedures of which refer to Article 109 of the Criminal Procedure Code of the Russian Federation.

At the same time, in the case of the court choosing a more lenient preventive measure than the one for which the motion was filed to extend the period, the above arguments are fully applicable to the fact that such a decision will be a decision to partially satisfy the official's motion , as well as to the fact that the refusal to extend the period of detention must be accompanied by an indication in the operative part of the court decision of the immediate release of the accused from custody (except in the case of choosing a preventive measure in the form of bail).

Thus, on petitions for extension of the period of validity of preventive measures, the court is authorized to make two types of decisions: to satisfy the petition of the official and to extend the period of validity of the preventive measure or to change it to a more lenient one, but not lenient than a ban on certain actions; to refuse to satisfy the petition of the official.

Taking into account the above, it should be concluded that the types of final decisions taken on the merits of the main judicial review proceedings are uniform. The court is authorized to take two types of decisions on the merits: to satisfy the submitted complaint/petition in full or in part; to refuse to satisfy them. The content of each of the specified types depends on the type of judicial review within which the relevant powers of the court are exercised.

Both at the time of filing the relevant complaint/petition and during the proceedings on them, circumstances may be revealed that prevent the possibility of making a decision on the merits. The impossibility of considering the complaint/petition may be of a fundamental nature or be temporary if the relevant circumstances can be eliminated. This applies to decisions to refuse to accept the complaint/petition for consideration/proceedings[437], to terminate proceedings on them, or to return them to the applicant .

[437] We consider these concepts to be equivalent.

Since these types of decisions are not enshrined in the Criminal Procedure Code of the Russian Federation (unlike, for example, the Civil Procedure Code of the Russian Federation, where similar decisions are covered by separate articles, for example , Articles 134, 135[438]), we will turn to the resolutions of the Plenum of the Supreme Court of the Russian Federation, regulating the implementation by the courts of each of the three main types of judicial review.

The court refuses to accept a complaint or petition for proceedings in several cases.

- Based on the complaint received by the court, it was established that the complaint with the same arguments has already been satisfied by the prosecutor or the head of the investigative body, or the contested decision has been cancelled by them, due to the absence of grounds for verifying the legality and validity of the actions (inaction) or decisions of the official conducting the preliminary investigation. In this case, the complaint is subject to consideration on the merits if the applicant disagrees with the decision of the prosecutor or the head of the investigative body, or if the demands contained in the complaint are partially satisfied, or when it is evident from the complaint that the contested decision, cancelled by the head of the investigative body or the prosecutor, was also previously cancelled by them with the subsequent issuance of a similar decision by the investigator (inquiry officer) (clause 8 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation").

- Before a court hearing on a complaint is scheduled, the preliminary investigation of the criminal case is completed and the criminal case is sent to the court for consideration on the merits. At the same time, complaints filed by persons who are not participants in the trial of the criminal case, complaints raising the issue of recognizing as illegal and unfounded decisions and actions (inactions) that, in accordance with the Criminal Procedure Code of the Russian Federation, cannot be the subject of verification of their legality and validity at the stage of trial when considering a criminal case by the

[438] Civil Procedure Code of the Russian Federation of 14.11.2002 No. 138-FZ // Rossiyskaya Gazeta. 2002. No. 220.

court, including in the appellate or cassation procedure , as well as complaints that are based on circumstances subject to independent investigation, in particular on the commission of criminal acts by officials during the conduct of an inquiry or preliminary investigation, cannot be refused (clause 9 of the said Resolution of the Plenum of the Supreme Court of the Russian Federation).

- After the entry into force of the judge's decision, adopted in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the court received a complaint against the decision of the prosecutor, the head of the investigative body, adopted on the basis of the applicant's complaint, filed in accordance with Article 124 of the Criminal Procedure Code of the Russian Federation, to refuse to initiate a criminal case, to terminate a criminal case and on other issues on which a court decision had already been made, if the complaint does not contain new circumstances that were not examined in the court hearing (clause 25 of the said resolution of the Plenum of the Supreme Court of the Russian Federation).

- The petition was filed by the investigator or inquiry officer in violation of the rules of jurisdiction (clause 4 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 "On the practice of considering petitions by courts for the performance of investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation) ").

The court shall terminate proceedings on a complaint or petition in the following cases.

- It was established at the court hearing that the complaint with the same arguments had already been satisfied by the prosecutor or the head of the investigative body, or the contested decision had been overturned by them, due to the absence of grounds for verifying the legality and validity of the actions (inaction) or decisions of the official conducting the preliminary investigation. Exceptions to this rule are the same as for refusing to accept a complaint for proceedings (clause 8 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice

of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation").

- During the proceedings on the complaint, it was established that the preliminary investigation of the criminal case has been completed and the criminal case has been sent to the court for consideration on the merits. Exceptions to this rule are the same as for refusal to accept a complaint for proceedings (clause 9 of the said Resolution of the Plenum of the Supreme Court of the Russian Federation).

- After the court hearing is scheduled, the complaint is withdrawn by the applicant. In this case, the proceedings on the complaint are terminated due to the lack of grounds for checking the legality and validity of the actions (inaction) or decision of the official conducting the criminal prosecution (clause 8 of the said resolution of the Plenum of the Supreme Court of the Russian Federation).

The court returns the complaint or petition to the applicant in the following cases.

- The impossibility of making a decision on the merits of a petition due to the failure to bring the suspect or accused to court, which does not prevent a subsequent appeal to the court with a corresponding petition (clause 15 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 "On the practice of applying by courts the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions ").

- Consent to the filing of the petition was given by a person other than that specified in the relevant provisions of Articles 108 and 109 of the Criminal Procedure Code of the Russian Federation, which does not prevent the subsequent filing of the petition with the court after the violation committed has been eliminated (clause 24 of the said resolution of the Plenum of the Supreme Court of the Russian Federation).

- The received petition does not meet the requirements of the criminal procedure law, which prevents its consideration, while the possibility of re-filing the petition after the violation has been eliminated is not excluded (clause 3 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 "On the practice of considering petitions by courts for investigative actions related to the restriction of the

constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)").

- The complaint does not contain the necessary information, which prevents its consideration (for example, there is no information about what actions or decisions are being appealed, the complaint is not signed by the applicant, the powers of the defense attorney or representative of the applicant are not confirmed by the relevant documents), or the complaint contains obscene or offensive expressions. In this case, the applicant is explained the right to reapply to the court after the deficiencies have been corrected (clause 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation").

By systematizing the above positions of the Supreme Court of the Russian Federation, it is possible to identify the general grounds and features of the adoption of each of the indicated types of procedural decisions.

Thus, a decision to refuse to accept a complaint/petition for proceedings may be made only at the stage of their acceptance, before a court hearing on them is scheduled. A decision to terminate proceedings on a complaint/petition, on the contrary, may be made only after a court hearing is scheduled. At the same time, these types of court decisions, as a rule, have general grounds for adoption, the presence of which prevents a repeated appeal to the court, which indicates the final nature of these decisions.

The decision to return the complaint/petition to the applicant may be made either before the commencement of proceedings on them or after the court hearing is scheduled. This decision assumes the possibility of re-applying to the court after the identified deficiencies have been eliminated, which indicates its interim nature.

At the same time, the explanations provided by the Supreme Court of the Russian Federation are not exhaustive in terms of resolving problems that may arise in the theory and practice of making procedural decisions by the court.

In particular, the question arises whether the court has the right to terminate proceedings on a complaint/petition, as well as return them (after acceptance for proceedings) outside the court session. In our opinion, from the moment the court session

is scheduled, the participants in the judicial review proceedings have the right to participate in it and to communicate to the court their position regarding the procedural fate of the complaint or petition. This right, by virtue of the requirements of Part 4 of Article 11 of the Criminal Procedure Code of the Russian Federation, must be ensured by the court. Thus, the court's decision to terminate proceedings on a complaint/petition, to return them to the applicant, as well as the decision to send them according to jurisdiction, after they are accepted for proceedings, can only be made at a court session.

The cited resolutions of the Plenum of the Supreme Court of the Russian Federation indicate the possibility and consequences of withdrawing an appeal only in relation to the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation and only if the withdrawal took place after the appointment of a court hearing, but nothing is said about the withdrawal of motions filed in accordance with Articles 108, 109, 165 of the Criminal Procedure Code of the Russian Federation. This does not mean that the withdrawal of such motions by the investigator is impossible, since otherwise it would contradict the principle of adversarial proceedings and turn the court into a criminal prosecution body, since the court would continue their consideration in the absence of an expression of will (reason for the exercise of judicial control) of the official. Judicial practice knows of cases of withdrawal of motions filed in accordance with Article 108 or 165 of the Criminal Procedure Code of the Russian Federation, with subsequent termination of proceedings on them[439].

The question arises as to what decision the court should make when withdrawing a complaint before a court hearing is scheduled and when withdrawing a motion.

With regard to appeals against judicial decisions, the legislator has provided that if an appeal/representation is withdrawn before the start of a court hearing, the appellate proceedings on them are terminated. If the appeal/representation is withdrawn before the appointment of a court hearing of the appellate instance, the judge decides to return them (Part 3 of Article 389.8 of the Criminal Procedure Code of the Russian Federation).

[439] See, for example: the ruling of the Smolninsky District Court of St. Petersburg dated 19.10.2020 based on material No. 3/1-358/2020 // archive of the Smolninsky District Court of St. Petersburg.

At the same time, the withdrawal of a complaint/petition excludes the possibility of their re-submission on the same grounds, which indicates the inadmissibility of their return. In this regard, when withdrawing a complaint/petition before the court hearing is scheduled, the court must refuse to accept them.

The legislator's different approach to regulating the consequences of the withdrawal of an appeal, in our opinion, is explained by the fact that, unlike the consideration of complaints/petitions filed in accordance with Articles 108, 125, 165 of the Criminal Procedure Code of the Russian Federation, control over the presence of a proper reason for an appellate review is also assigned to the court of first instance (Part 4 of Article 389.6 of the Criminal Procedure Code of the Russian Federation), in connection with which the court of appeal cannot refuse to accept a complaint sent to it by a lower court. With regard to judicial review at pre-trial stages of criminal proceedings, the court directly considering the complaint/petition verifies the presence of a proper reason for proceedings on them.

Thus, when deciding what type of judicial act should be adopted when a complaint/petition is withdrawn, it is necessary to be guided by the general rule that if the complaint/petition is withdrawn before the court hearing is scheduled, the court must refuse to accept them; if after, it must terminate the proceedings on them.

The cited resolutions of the Plenum of the Supreme Court of the Russian Federation do not contain any explanations regarding the possibility and grounds for terminating proceedings on petitions filed by officials. At the same time, it would be wrong to believe that such decisions cannot be made by the court. We have cited one ground – withdrawal of the petition. Other grounds, in our opinion, include: the death of the accused during the consideration of the petition for the selection of a preventive measure against him or for the extension of its validity; the court’s establishment of the actual impossibility of conducting a search at a certain address due to the fact that such an address does not exist; the court’s establishment of the fact of the absence of the address at which the investigator is petitioning for the selection of house arrest for the accused. In the latter case, the court is deprived of the authority to select a more lenient preventive measure, since its selection is possible only in a situation where the court has the procedural opportunity to select the

requested preventive measure. Otherwise, it would mean assigning the function of criminal prosecution to the court.

The court must also terminate proceedings on a motion to authorize the conduct of an investigative action or to recognize it as lawful if it comes to the conclusion that a court decision is not required for its conduct. During the generalization of judicial practice, the said case was identified, but the court refused to accept the notice for consideration, since it came to the corresponding conclusion at the stage of preparation for the court hearing[440].

It should be noted that the circumstance cited by the Plenum of the Supreme Court of the Russian Federation as the basis for refusing to accept a complaint, in the form of the presence of a decision of a judge that has entered into legal force, adopted in accordance with Article 125 of the Criminal Procedure Code on the same issues on which the decision of the prosecutor, the head of the investigative body, adopted in accordance with Article 124 of the Criminal Procedure Code of the Russian Federation is being appealed, may also be revealed during the court hearing on the complaint, which excludes the possibility of refusing to accept it. In such a case, the court must terminate the proceedings on the complaint.

The issue of the possibility of refusing to accept a complaint or terminating proceedings on it on the grounds specified by the Plenum of the Supreme Court of the Russian Federation should be considered separately, when a complaint with the same arguments has already been satisfied by the prosecutor or the head of the investigative body, as well as when the contested decision has been cancelled by them. In practice, this problem also affects cases of termination of the contested actions or inaction of officials.

In such cases, courts, as a rule, terminate proceedings on the complaint or refuse to accept it for consideration due to the fact that the subject of the appeal has ceased to exist[441].

There are different points of view on this issue in science. For example, A.N. Ryzhikh notes that the cancellation of the contested decision should entail the termination

[440] Resolution of the Nevsky District Court of St. Petersburg, issued on case No. 3/3-312/21 (Appendix No. 10).
[441] See Appendix No. 9.

of proceedings on the complaint[442]. Disagreeing with this approach, N.A. Bydantsev points out the need for a conceptual change in the approach to the regulation and implementation of judicial review in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, so that it becomes an effective means of protecting violated human and civil rights and freedoms. To this end, the author proposes to legislatively provide for mandatory consideration of the complaint on the merits with the issuance of a final judicial decision, regardless of whether the violation of the applicant's rights has been eliminated by the time of the trial by the bodies or officials carrying out the criminal prosecution[443].

In our opinion, we should partially agree with the stated position, differentiating the powers of the court to terminate proceedings on a complaint or refuse to accept it depending on the content of the actions of the officials who eliminated the violation. Thus, the cancellation of the contested decision by the head of the investigative body or the prosecutor can only be the basis for the court to terminate proceedings on a complaint or refuse to accept it for consideration when such cancellation is made on the grounds of the illegality or unreasonableness of the official's decision. In this case, the need to obtain a court decision is excessive. If the official's decision is canceled by way of departmental control or prosecutorial supervision on other grounds, then the termination of proceedings on the complaint will mean a refusal not only of judicial, but also of other forms of protection.

For example, if during the consideration of a complaint by the court against a ruling to suspend a preliminary investigation, filed on the grounds of the absence of grounds specified in Article 208 of the Criminal Procedure Code of the Russian Federation, this ruling is cancelled by the head of the investigative body due to the fact that the grounds for suspension have disappeared but were not initially illegal, the court has no right to terminate the proceedings on the complaint. Otherwise, this would mean denying the applicant legal protection. Establishing the illegality of the ruling is also necessary for

[442] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Ekaterinburg, 2008. P.139-140.
[443] Bydantsev N.A. Current issues of judicial review proceedings under Article 125 of the Criminal Procedure Code of the Russian Federation // Laws of Russia: experience, analysis, practice. 2020. No. 3. P. 11.

assessing the effectiveness of the investigation, which is the subject of the court's cognitive activity, for example, when considering petitions for preventive measures.

A similar situation may arise if the investigator fails to familiarize the accused with the expert's report, i.e., if the requirements of Article 206 of the Criminal Procedure Code of the Russian Federation are violated, when, during the consideration of a complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation on such inaction by the investigator, the latter familiarizes the accused with this report, and the court terminates the proceedings on the complaint due to the disappearance of the subject of the appeal. In this case, the court must also consider the complaint on the merits. Establishing the fact of violation of the applicant's rights in retrospect is necessary both to prevent similar violations during further investigation and to determine the amount of damages to be compensated in the event of possible rehabilitation. In addition, given that the study of the expert's report, its analysis, possible preparation of a petition for the appointment of a repeat examination, and an appeal to a specialist on the issue of assessing the validity of the report take time, the presence of a court ruling recognizing the investigator's inaction as illegal, which resulted in the accused's untimely familiarization with the expert's report, will serve as a guarantee against an unjustified restriction on the accused's time frame for familiarization with the case materials (containing this report) in accordance with Article 217 of the Criminal Procedure Code of the Russian Federation[444].

Our generalization of judicial practice has shown that when eliminating a violation by an official, the courts, as an argument in favor of the impossibility of considering the complaint on its merits, refer to the impossibility of imposing on the official the obligation to eliminate the violation committed, which is an integral part of the decision to satisfy the complaint. The erroneousness of such an approach was discussed above.

Thus, the court is authorized to refuse to accept a complaint for proceedings or to terminate proceedings on it in connection with the elimination of the violation committed by the official, only if such elimination is associated with the establishment of the

[444] Lukianov S.S. Challenging issues of determination of court jurisdiction over adoption of procedural decisions in exercising judicial control at pre-trial criminal procedure stages // Russian investigator. 2024. No. 5. P.20.

illegality or groundlessness of the contested actions (inaction) and decisions of the official. In other cases, the subject of the appeal is retained.

To sum up the above, we note that the common ground for various types of judicial review for refusing to accept a complaint/petition for consideration and for terminating proceedings on them is the absence of grounds for exercising control over the legality and validity of limiting the constitutional rights of citizens, as well as the withdrawal of the complaint or petition. The grounds for returning a complaint/petition to the applicant are the defects of the reason for exercising judicial review, which is the complaint or petition itself.

There are approaches in science that suggest that it is impossible to consider a complaint or petition on the merits due to the insufficiency of the materials presented. In particular, S.V. Nikitina, in relation to the court's decision on a preventive measure, proposes to enshrine in law the court's right to oblige preliminary investigation bodies to provide missing materials, in the absence of which, by the beginning of the court hearing, the petition should be considered not filed[445]. I.L. Petrukhin points out that a judge should have the right to return an official's petition to limit the constitutional rights of citizens for additional justification[446]. We cannot agree with these approaches, since the proposed powers are beyond the court's competence to participate in the process of proof. If the petition is insufficiently substantiated, the court must decide to refuse to satisfy it.

The problem of making decisions on complaints and petitions submitted to the court in violation of the rules of jurisdiction remains unresolved.

This issue of the Criminal Procedure Code of the Russian Federation is not regulated. Only in paragraph 4 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 01.06.2017 No. 19 "On the practice of considering petitions by courts for investigative actions related to the restriction of constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation) " it is

[445] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.176.
[446] Petrukhin I.L. Judicial power: control over the investigation of crimes. Moscow, 2008. P.131-132.

stated that in the event of a violation of the rules of jurisdiction, the court refuses to accept the petition for proceedings.

There are different points of view on this issue in science. In particular, V.M. Petrovets points out that when establishing the lack of jurisdiction of the relevant appeal to the court, the latter must issue a ruling on the transfer of the petition or complaint to the jurisdiction[447]. A.N. Ryzhikh also suggests legislatively enshrining the powers of the court to transfer the complaint to the jurisdiction[448]. E.V. Noskova notes that the court must be authorized to make this decision both at the stage of preparation for the consideration of the complaint and at the stage of proceedings on it[449]. S.S. Kripinevich substantiates the need for legislatively enshrining the powers of the court to refuse to accept for proceedings a petition for permission to carry out an investigative action in case of violation of the rules of jurisdiction[450].

The issue under consideration has also not been resolved in practice, since, as indicated above, filing a complaint in violation of the rules of jurisdiction entails both its referral to jurisdiction and a refusal to accept it for proceedings or a refusal to satisfy it.

With regard to the consideration of a criminal case on its merits, the court, both at the stage of preparation for the trial and during the latter, having established that the criminal case is not subject to its jurisdiction, is obliged to transfer it to another court according to its jurisdiction, except for the case when the court has begun its consideration in a court session and all defendants agree to its continuation by this court (Article 34 of the Criminal Procedure Code of the Russian Federation).

In our opinion, this procedure should be extended to proceedings on complaints of participants in criminal proceedings, since it meets both the principle of reasonableness of criminal proceedings deadlines and the requirement of effective protection of the applicant's rights as the weaker party to the legal relationship. Regardless of the moment

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[447] Petrovets V.M. Forms and limits of court resolution of issues in pre-trial proceedings in Russian criminal proceedings: diss. ... candidate of legal sciences. Tyumen, 2007. P.149.

[448] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: diss.... candidate of legal sciences. Ekaterinburg, 2008. P.139.

[449] Noskova E.V. Proceedings for consideration and resolution of complaints by the court in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation: author's abstract. diss. … candidate of legal sciences. Tomsk. 2011. Pp. 10-11 .

[450] Kripinevich S.S. Institute of preparation for a court hearing and forms of its implementation in the pre-trial stages of criminal proceedings of the Russian Federation: diss. ... Cand. of legal sciences. Moscow, 2019. P.17.

at which the lack of jurisdiction of a complaint to a specific court was discovered, the court has no right to return the complaint, refuse to accept it, or terminate proceedings on it.

The question arises as to what the court should do if it is found to lack jurisdiction over the corresponding petition of the investigator. On the one hand, such a petition is filed by the stronger party in criminal procedural legal relations, which may lead to the conclusion that the court should not correct the mistake made by such a participant and should, for example, refuse to accept the petition for consideration. On the other hand, if it is found to lack jurisdiction over the criminal case received with the indictment, the court is authorized not to return it to the prosecutor, but to send it according to jurisdiction (Article 227 of the Criminal Procedure Code of the Russian Federation), which, among other things, protects the interests of the victim, society and the state in a fair and timely trial. Thus, the court must be authorized to send the corresponding petition of the official according to jurisdiction.

At the same time, if, when sending a criminal case to court for consideration on the merits, jurisdiction is, as a general rule, exclusive (Articles 31, 32 of the Criminal Procedure Code of the Russian Federation), then the jurisdiction of the corresponding motions of officials is alternative. The right to choose a specific court to consider the motion belongs to the official who filed it. The corresponding motions are authorized, in particular, to be considered by the court at the place of the preliminary investigation or at the place of detention of the suspect (Part 4 of Article 108 of the Criminal Procedure Code of the Russian Federation), at the place of the preliminary investigation or at the place of detention of the accused (Part 8 of Article 109 of the Criminal Procedure Code of the Russian Federation), at the place of the preliminary investigation or at the place of the investigative action (Part 2 of Article 165 of the Criminal Procedure Code of the Russian Federation). The choice of a specific court for an official to which the motion is to be sent would mean that the court assumes the function of criminal prosecution, which is unacceptable.

At the same time, we cannot agree with the stated position of the Supreme Court of the Russian Federation on the need to refuse to accept for proceedings a petition filed

in accordance with Article 165 of the Code of Criminal Procedure of the Russian Federation if it is not within the jurisdiction of a specific court, since this type of decision implies the absence of grounds for verifying the legality and validity of the actions (inactions) and decisions of officials conducting criminal prosecution. Violation of the rules of jurisdiction by the applicant does not mean the absence of grounds for the exercise of judicial review, but only indicates that it should be exercised by another court. In the case under consideration, the petition must be returned, which implies the possibility of re-filing it in another court. Similarly, in civil proceedings, the lack of jurisdiction of a case by a specific court is the basis for returning the statement of claim, and not for refusing to accept it (clause 2, part 1, Article 135 of the Code of Civil Procedure of the Russian Federation).

This rule also applies in the event of a violation of the rules on jurisdiction during the proceedings on the petition. In this situation, the court is authorized to transfer the petition to jurisdiction only if the official expresses his/her will to choose a court within the framework of alternative jurisdiction. If during the consideration of the petition the official does not propose a specific court or does not appear at the court hearing, the court is authorized to return the petition, and not to terminate the proceedings on it.

When sending a complaint or petition on jurisdiction, the proper procedural guarantee of the rights of participants in criminal proceedings will be the provisions of Article 36 of the Criminal Procedure Code of the Russian Federation, according to which disputes on jurisdiction between courts are not allowed. This rule is also applicable to criminal procedural legal relations arising during the exercise of judicial review.

In our opinion, the introduction of additional types of court decisions into legal regulation, in particular, decisions to leave a complaint/petition without action or without consideration, is not required.

A.N. Ryzhikh proposes to leave a complaint without action if it does not meet the requirements for the form and content of the complaint, with an indication of the period for eliminating the deficiencies, and if they are not eliminated, to return it[451]. At the same

[451] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: dis. ... candidate of legal sciences. Ekaterinburg, 2008. P.139.

time, the powers to return the complaint are sufficient for the court to effectively respond to the identified deficiencies in the complaint. Similarly, an appeal that does not meet the requirements imposed on it is returned with an indication of the period for eliminating the deficiencies (Part 4 of Article 389.6 of the Criminal Procedure Code of the Russian Federation).

The dismissal of a petition for permission to conduct an investigative action in the absence of a subject for a court decision, as well as a petition for a preventive measure and a complaint when deficiencies are identified that prevent their consideration, as proposed by S.S. Kripinevich[452], is also, in our opinion, not required to be singled out as an independent type of decision, since the court's powers to refuse to accept a petition for consideration, as well as to return a petition or complaint, fully cover the above grounds.

Interim decisions, i.e. those that do not complete the consideration or block further progress of a complaint or petition, include decisions to return a complaint/petition, to transfer it to a competent jurisdiction, all court decisions on the performance of individual investigative and other procedural actions, decisions to postpone a court hearing, to extend the period of detention, to challenge, and others.

Taking into account the above, it should be concluded that the competence of the court in the exercise of judicial control at the pre-trial stages of criminal proceedings includes the authority to make procedural decisions, the system of which looks like this.

Court decisions, based on the criterion of their relation to the outcome of judicial review proceedings, are divided into final and interim.

Final decisions are those that conclude the consideration of a complaint or petition or block further progress. Final decisions are divided into decisions made on the merits of the complaints/petitions filed and decisions made not on the merits of the complaints/petitions filed.

On the merits of the complaints/petitions filed, the court is authorized to make two types of decisions:

1) A decision to satisfy the complaint/petition in whole or in part.

[452] Kripinevich S.S. Institute of preparation for a court hearing and forms of its implementation in the pre-trial stages of criminal proceedings of the Russian Federation: diss. ... Cand. of legal sciences. Moscow, 2019. Pp. 17-19.

2) Decision to refuse to satisfy the complaint/petition.

The court is authorized to make two types of decisions on complaints/petitions not based on the merits:

1) A decision to refuse to accept a complaint/petition for proceedings - in the absence of grounds for exercising judicial control over the legality and validity of the restriction of citizens' constitutional rights, which was revealed at the stage of accepting the complaint/petition for proceedings (before the court hearing on them is scheduled), as well as when withdrawing the complaint/petition at this stage. The issuance of this decision prevents the complaint/petition from being re-filed in court.

2) A decision to terminate proceedings on a complaint/petition – in the absence of grounds for exercising judicial control over the legality and validity of the restriction of citizens' constitutional rights, which was revealed at the stage of proceedings on a complaint/petition, as well as in the event of withdrawal of the complaint/petition at this stage. The issuance of this decision prevents the re-filing of the complaint/petition to the court. This decision can only be made at a court hearing.

Interim decisions are those that do not complete the consideration and do not block further movement of the complaint or petition. Interim decisions are divided into decisions taken in the event of temporary impossibility of considering the complaint/petition, and other interim decisions.

Interim decisions taken in the event of a temporary impossibility of considering a complaint/petition include:

1) The decision to return the complaint/petition – if there is a defect in the reason for the exercise of judicial review, which is the complaint or petition itself, as well as in the event of a violation of the rules of jurisdiction of the relevant petition, provided that the official did not offer the court his choice within the framework of alternative jurisdiction. The decision to return the complaint/petition to the applicant may be made both before and after the commencement of proceedings on them, in the latter case it can only be made at a court hearing. The decision to return the complaint/petition implies the possibility of re-applying to the court after the identified deficiencies have been eliminated.

2) A decision to transfer a complaint/petition to a jurisdiction – if a violation of the rules of jurisdiction is established both before and after the commencement of proceedings on the complaint, as well as if a violation of the rules of jurisdiction is established after the commencement of proceedings on the relevant petition of an official, provided that he/she has proposed to the court his/her choice within the framework of alternative jurisdiction. A decision to transfer a complaint/petition to a jurisdiction after they have been accepted for proceedings may only be made at a court hearing.

Other interim decisions include court decisions on the performance of individual investigative and other procedural actions, decisions on the postponement of a court hearing, on the extension of the period of detention, on recusal, and others.

§4. Mechanism for the implementation of the court's competence

The mechanism for implementing the court's competence in exercising judicial review at pre-trial stages of criminal proceedings is a system of procedural actions of the court, consisting of successive stages, for the application of criminal procedural rules that establish the content and scope of its competence to exercise judicial review at pre-trial stages of criminal proceedings.

The first element of this mechanism are legal norms that establish the content and scope of the court's competence. The unity of the court's competence in the exercise of judicial review at the pre-trial stages of criminal proceedings entails the need for unification of the legal norms regulating it, which should help overcome the inconsistency of judicial practice and increase the guarantees of the rights of the parties to the proceedings while effectively achieving the goals of judicial review.

We agree with the position of S.V. Burmagin[453], N.G. Muratova[454] and other researchers who propose to unify the normative regulation of judicial control activities by introducing a separate section or article into the Criminal Procedure Code of the Russian

[453] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.27.
[454] Muratova N.G. The system of judicial review in criminal proceedings: issues of theory, legislative regulation and practice: dis. … Doctor of Law. Ekaterinburg, 2004. P.114-115.

Federation. The corresponding section, in our opinion, can be placed in Part 2 of the Criminal Procedure Code of the Russian Federation "Pre-trial proceedings" as regulating legal relations arising at the stage of initiation of a criminal case and preliminary investigation.

The second element of the mechanism for implementing the court's competence is the system of procedural actions of the court, in which the relevant legal norms are implemented, that is, the procedure for implementing judicial review.

In scientific literature, attention is drawn to the unsatisfactory level of legal regulation of this procedure[455]. With regard to certain types of judicial review, it is noted that the courts experience significant difficulties in determining the proper procedure for a court hearing[456].

In science, the point of view is defended both on the differentiation of various judicial review procedures and on their unified nature. Thus, O.A. Myadzelets notes that the procedures for holding court hearings within the framework of judicial review in the law are formally differentiated into three independent procedures (Articles 108, 125, 165 of the Criminal Procedure Code of the Russian Federation)[457]. P.O. Gertsen divides the procedures for issuing interim judicial decisions into those that imply priority in the protection of private interests (Article 125 of the Criminal Procedure Code of the Russian Federation), public interests (Article 165 of the Criminal Procedure Code of the Russian Federation), as well as the possibility of taking into account both private and public interests, provided that they are relatively equivalent (Article 108 of the Criminal Procedure Code of the Russian Federation)[458].

In the structure of the institute of preparation for a court hearing in pre-trial proceedings, S.S. Kripinevich identifies three sub-institutions, which differ, as the author points out, in essential features. The author attributes to them the preparation of the

[455] See, for example: Markovicheva E.V., Stolnikov P.M. Protection of the rights of participants in the process in the exercise of judicial control over the procedural discretion of the investigator // Bulletin of Tomsk State University. Law. 2020. No. 35. P. 106-107.
[456] See, for example: Rudakova S.V. Criminal procedural appeal and its system in domestic pre-trial proceedings: diss. ... Doctor of Law. Krasnodar, 2023. P.347.
[457] Myadzelets O.A. Judicial control over the termination of a criminal case and criminal prosecution: author's abstract. dis. ... candidate of legal sciences. Moscow, 2008. P.11.
[458] Gertsen P.O. Implementation of the right to appeal and review of interim court decisions made during pre-trial proceedings: ensuring a balance of private and public interests: diss. ... Cand. of legal sciences. Tomsk, 2023. Pp. 44-45.

consideration of a petition for investigative actions, the preparation of the consideration of a petition for the application of preventive measures, and the preparation of the consideration of complaints in accordance with Articles 125 and 125.1 of the Criminal Procedure Code of the Russian Federation. S.S. Kripinevich proposes various elements of the preparatory part of a court hearing for each of the named sub-institutions[459].

In particular, N.N. Kovtun advocates the unification position, noting that the main forms of judicial review are united, among other things, by the unity of the procedure, which, although it may differ in particulars, nevertheless remains a single, in essence, form of resolving the social and legal conflict of the parties through judicial procedure and a generally binding judicial act[460]. According to A.S. Chervotkin, intermediate judicial procedures are not systematized, are scattered across all sections of the Criminal Procedure Code of the Russian Federation, and in most cases they are very similar, which is a serious reason for their isolation and improvement for the purpose of unification. The author proposes to provide in the law a single procedure for making intermediate judicial decisions in a standard administrative court session (by analogy with the administrative court session provided for by the Judicial Statutes of 1864)[461].

A.A. Endoltseva takes a middle position on the need for reasonable unification and reasonable differentiation of judicial review procedures in pre-trial proceedings. The author draws attention to the complexity of complete unification of many judicial review procedures in connection with significant differences in the subject of judicial review, which determines the specifics of the court hearing and the court's decision on the issue under consideration. The reasonable unification allowed by the author consists, in particular, in distinguishing three judicial review procedures by the degree of regulation, concerning the selection of preventive measures, consideration of complaints, consideration of petitions for the performance of investigative actions, to which other

[459] Kripinevich S.S. Institute of preparation for a court hearing and forms of its implementation in the pre-trial stages of criminal proceedings of the Russian Federation: diss. ... Cand. of legal sciences. Moscow, 2019. Pp. 14-19.
[460] Kovtun N.N., Yartsev R.V. Judicial control over the legality and validity of actions and decisions of officials conducting criminal proceedings in Russia (Chapter 16 of the Criminal Procedure Code of the Russian Federation). 2nd ed. Nizhny Novgorod, 2008. Page 13.
[461] Chervotkin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... Cand. of legal sciences. Moscow, 2013. Pp. 9, 52, 60, 201-202.

norms of the Criminal Procedure Code of the Russian Federation refer as the main (basic) procedures[462].

In the course of the survey, almost two thirds of judges (65.6%) spoke in favor of unification of the procedure for implementing various judicial review proceedings in criminal procedural legislation. We agree with the majority of respondents. In our opinion, the unity of the court's competence in implementing judicial review also determines the unity of the mechanism for its implementation. Effective achievement of the single goal of judicial review - the protection of constitutional rights and freedoms of the individual, is possible with the unity of the internal logic of the system of procedural actions in which the relevant powers of the court are implemented. This approach does not mean a complete coincidence of judicial review procedures, allowing for their differentiated regulation, but presupposes the unity of the essence of these procedures, that is, their structure and the content of its main stages, including the sequence of procedural actions.

In science, the similarity of the procedures for implementing judicial review and considering a criminal case on the merits is noted. In particular, T. Yu. Vilkova, based on the universality of the principles of criminal procedure, notes that such provisions as publicity, orality, and immediacy of the trial, despite their effect mainly at judicial stages, affect all criminal proceedings, including the implementation of judicial review. The author proposes to attribute the above general conditions of the trial to the principles of criminal proceedings and to enshrine them in Chapter 2 of the Criminal Procedure Code of the Russian Federation[463]. A. S. Chervotkin believes that the general conditions of the trial and the rules for conducting the preparatory part of the court session are common to all judicial proceedings[464].

In relation to individual types of judicial review, there are also proposals in science to extend the procedure for their implementation to the general conditions of judicial

[462] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: diss. ... Cand. of legal sciences. Moscow, 2023. P.15, 72, 74.
[463] Vilkova T.Yu. The system of principles of Russian criminal proceedings: author's abstract. dis. ... Doctor of Law. Moscow, 2022. P.11, 17.
[464] Chervotkin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2013. P. 65.

proceedings. In particular, A.A. Endoltseva [465] and N.P. Kirillova [466] adhere to this approach in relation to the court's decision on the measure of restraint, for consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation – S.I. Koneva[467], S.V. Rudakova[468] and A.A. Ustinov[469].

The extension of the general conditions of judicial proceedings to the procedure for the court to decide on the issue of granting permission to conduct investigative actions in science encounters difficulties in connection with the peculiarities of the operation of the principle of adversarial proceedings in this judicial review proceeding.

Thus, in science, attention is drawn to the limited effect of the principle of adversarial proceedings in the given form of judicial review. For example, A.V. Polyakova notes that when deciding on the issue of granting permission to conduct an investigative action, the implementation of the principle of adversarial proceedings is difficult due to the need to maintain the secrecy of the preliminary investigation[470]. A.S. Chervotkin calls this procedure "truncated" [471].

We cannot fully agree with this approach, if only because if the appellate court cancels the corresponding ruling of the court of first instance and transfers the material for a new review, then, in connection with the disclosure of the secret of the investigative action, both parties have the right to participate in the consideration of the corresponding petition, and, thus, the principle of adversarial proceedings must be fully applied. In this regard, we should agree with the position of P.O. Herzen that the appellate court is called

[465] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... Cand. of legal sciences. Moscow, 2023. P.16.
[466] Kirillova N.P. Theoretical and practical problems of judicial review in Russian legislation // Criminal justice: the connection of times: Selected materials of the international scientific conference, St. Petersburg, October 6-8, 2010. Moscow, 2012. P. 51.
[467] Koneva S.I. On the issue of the judge's participation in proving during the implementation of judicial review during the preliminary investigation // Russian Judge. 2014. No. 4. P. 25.
[468] Rudakova S.V. Criminal procedural appeal and its system in domestic pre-trial proceedings: dis. ... Doctor of Law. Krasnodar, 2023. P.31.
[469] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. P.102.
[470] Polyakova A.V. Implementation of the principle of adversarial proceedings in the activities of the investigator and defense attorney in pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2024. P. 105.
[471] Chervotkin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2013. P. 55.

upon to eliminate the imbalance of private and public interests in the implementation of judicial review[472].

A.A. Ustinov even proposes to consider petitions for permission to carry out investigative actions (with the exception of those declared in accordance with Part 3.1 of Article 165 of the Criminal Procedure Code of the Russian Federation) without the participation of the parties and outside of the adversarial process by means of consideration by the judge of the materials sent to him in electronic form together with the conclusion of the prosecutor[473].

We also cannot agree with this approach, since, in our opinion, it neutralizes the very content of the given type of judicial control, effectively equating it to departmental or prosecutorial supervision. A significant simplification of the judicial control procedure entails a reduction in the procedural guarantees of the parties.

The science also suggests other means of bringing the procedure for implementing judicial review activities closer to the procedure for considering a criminal case on the merits. In particular, A.A. Endoltseva suggests extending the general procedure for preparing for a court hearing, provided for in Chapter 33 of the Criminal Procedure Code of the Russian Federation, to all judicial review procedures, and the rules established for the preparatory part of a court hearing (Chapter 36 of the Criminal Procedure Code of the Russian Federation) to the procedure for considering motions and complaints in accordance with Articles 108 and 125 of the Criminal Procedure Code of the Russian Federation[474]. N.A. Kolokolov generally notes that the procedure for judicial review activities is based on the model of criminal court proceedings[475].

In our opinion, the general conditions of judicial proceedings, their general structure, and the effect of the adversarial principle extend their effect to judicial review procedures, which is due to both the uniform epistemological laws of the process of

[472] Gertsen P.O. Implementation of the right to appeal and review of interim court decisions made during pre-trial proceedings: ensuring a balance of private and public interests: diss. ... Cand. of legal sciences. Tomsk, 2023. Pp. 44-45.
[473] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: dis. ... candidate of legal sciences. Moscow, 2022. P.150.
[474] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... Cand. of legal sciences. Moscow, 2023. P.16.
[475] Kolokolov N.A. Judicial review at the stage of preliminary investigation of crimes: an important function of the judiciary (problems of implementation in the context of legal reform): diss. ... candidate of legal sciences. Moscow, 1998. P. 170.

judicial cognition and the fact that judicial review is one of the forms of administering justice, is inextricably linked with it, and is subject to the same principles on which the model of modern Russian justice is built. At the same time, the general conditions of judicial proceedings and the adversarial principle operate with the necessary restrictions due to the specifics of the subject, goals, and objectives of the judicial review function.

In science, there are different points of view regarding the internal structure of the mechanism for implementing judicial review competence.

M.A. Umarova identifies the organizational and preparatory stage, the stage of direct activity of authorized entities to establish, verify, and analyze the factual circumstances of a legal case, and the stage of adoption of the final procedural document as procedural stages of the mechanism of judicial review as an inter-branch institution[476].

A.S. Chervotkin proposes that the procedure for conducting a preliminary hearing should include its opening, explanation of the rights and obligations of the persons who have appeared, justification of the appeal by the person who initiated it or the prosecutor (when considering the petition of an official), hearing of other persons and examination of the materials[477]. A similar approach to the structure of a court hearing conducted in the order of judicial review is also adhered to by O.O. Avakov[478], A.A. Endoltseva[479] and S.V. Nikitina[480], who single out preparation for the court hearing as an independent stage.

In the structure of the procedure for considering a petition for the selection of a preventive measure, V.V. Gorban identifies such stages as filing a petition, preparing for its consideration, the consideration itself, as well as the stage of issuing a ruling and communicating it to interested parties[481], N.A. Andronik identifies an introductory, main

[476] Umarova M.A. Judicial review mechanism: general theoretical study: author's abstract. dis. ... candidate of legal sciences. Grozny, 2018. - P.11.
[477] Chervtokin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... Cand. of legal sciences. Moscow, 2013. Pp. 202-203.
[478] Avakov O.O. Judicial activity and its directions in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2012. P.123, 155.
[479] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... Cand. of legal sciences. Moscow, 2023. P. 13.
[480] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.130-131.
[481] Gorban V.V. Functions and powers of the court in pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Krasnodar, 2008. P.83.

and final part[482], O.G. Ivanova - a preparatory stage (ends with sending the material to the court), familiarization of the party with the material, and court proceedings[483].

E.R. Mirgorodskaya identifies the preparatory part of the court hearing, judicial investigation, the parties' debates, and the court's decision as the stages of consideration of a complaint in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation [484] . The announcement and examination of the prosecutor's conclusion, according to I.S. Bobrakova, is an independent stage of consideration of a complaint after judicial investigation[485].

A.A. Endoltseva points out that the court's consideration of a petition for permission to carry out investigative actions consists of the applicant's substantiation of the petition (if he is participating in the court hearing), examination of the materials presented, hearing the statements of the persons who appeared, hearing the opinion of the prosecutor, after which the court retires to a deliberation room[486].

Even to such types of judicial review proceedings, which, as S.V. Burmagin notes, formally do not have a legislatively established procedure and are carried out in the order established on the basis of judicial practice[487], science suggests applying elements of the general structure of judicial proceedings. For example, when considering a petition for removal from office in accordance with Article 114 of the Criminal Procedure Code of the Russian Federation, as N.A. Kolokolov points out, at the beginning of the session the judge announces which petition is subject to consideration, then the prosecutor or the person who filed the petition substantiates it, after which the participants in the process are heard[488].

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[482] Andronik N.A. Preventive measures chosen by the court at the request of the preliminary investigation bodies: problems of law enforcement and legislative regulation: diss. ... candidate of legal sciences. Ekaterinburg, 2022. P. 122.
[483] Ivanova O.G. Criminal procedure proceedings for the court's selection of a preventive measure: criminal procedure form and features of proof: diss. ... candidate of legal sciences. Krasnoyarsk, 2019. P.49.
[484] Mirgorodskaya E.R. Judicial procedure for considering complaints at the stage of initiating a criminal case: author's abstract. dis. ... candidate of legal sciences. Chelyabinsk, 2024. P.11.
[485] Bobrakova I.S. Use of the mechanism of optional judicial review by a lawyer to ensure the rights and legitimate interests of an individual in pre-trial proceedings: diss. ... candidate of legal sciences. Nizhny Novgorod, 2010. P.91.
[486] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: dis. ... Cand. of legal sciences. Moscow, 2023. P.108.
[487] Burmagin S.V. Judicial proceedings and decisions in the criminal justice system. M., 2021. P.261-262.
[488] Kolokolov N.A. Methodology for conducting the main judicial control actions at the stage of preliminary investigation. 2nd ed., revised and enlarged. Moscow, 2015. Part 2. Pp. 88-89.

An analysis of scientific views on the structure of judicial review proceedings leads us to the conclusion that scientists agree in identifying the main elements of this structure, consisting of preparatory, main and final actions of the court.

The procedure for a court hearing in relation to the main types of judicial review is regulated by the Criminal Procedure Code of the Russian Federation as follows.

According to Part 4 of Article 125 of the Code of Criminal Procedure of the Russian Federation, at the beginning of the hearing the judge announces which complaint is subject to consideration, introduces himself to the persons who have appeared at the court hearing, and explains their rights and obligations. Then the applicant, if he is participating in the court hearing, substantiates the complaint, after which the other persons who have appeared are heard. The applicant is given the opportunity to make a reply.

Part 6 of Article 108 of the Criminal Procedure Code of the Russian Federation stipulates that at the beginning of the hearing the judge announces which petition is subject to consideration, explains to the persons who have appeared at the court hearing their rights and obligations. Then the prosecutor or, on his instructions, the person who filed the petition, substantiates it, after which the other persons who have appeared at the court hearing are heard.

The procedure for a court hearing conducted in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, with the exception of specifying the persons who have the right to participate in it, is not regulated by the Criminal Procedure Code of the Russian Federation. At the same time, it is set out in paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 01.06.2017 No. 19 "On the practice of considering by courts petitions for investigative actions related to the restriction of constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation) ", according to which, at the beginning of the hearing, the judge announces which petition is subject to consideration, explains to the persons who have appeared their rights and obligations, including the right to file challenges and motions, submit materials related to the issue under consideration, and participate in their examination. Then, the person who filed the petition, if he or she is participating in the court hearing, substantiates it, the court examines the submitted

materials, hears the speeches of the persons who have appeared, the opinion of the prosecutor participating in the court hearing, and then retires to the deliberation room to make a ruling.

The procedures for implementing other types of judicial review are similar to those given. In particular, when considering a complaint against the decision of the Prosecutor General of the Russian Federation on extradition, at the beginning of the session the presiding judge announces which complaint is subject to consideration, explains to those present their rights, duties and responsibilities, then the applicant and (or) his defense attorney substantiate the complaint, after which the floor is given to the prosecutor (Part 5 of Article 463 of the Criminal Procedure Code of the Russian Federation).

As follows from the above provisions, the weakly regulated procedures for implementing various types of judicial review are similar, and they have common elements: an announcement of which complaint/petition is subject to consideration, an explanation of the rights and obligations of the persons appearing, an examination of the materials presented, hearing the speeches of the persons appearing, and other elements that resemble the general structure of judicial proceedings.

Preparation for a court hearing to consider a criminal case on the merits consists of establishing the presence of grounds or obstacles for such consideration, while the court decides on the direction of the criminal case according to jurisdiction, its return to the prosecutor, the termination of proceedings on it, and others (Chapters 33, 34 of the Criminal Procedure Code of the Russian Federation). When scheduling a court hearing, its preparatory part begins with the presiding judge opening it and announcing which criminal case is subject to consideration (Article 261 of the Criminal Procedure Code of the Russian Federation); the presiding judge explains to the participants their rights, duties and responsibilities (Articles 263, 267-270, 278 of the Criminal Procedure Code of the Russian Federation); the examination of the case materials constitutes the essence of the judicial investigation (Chapter 37 of the Criminal Procedure Code of the Russian Federation); the participants in criminal proceedings speak in judicial debates (Chapter 38 of the Criminal Procedure Code of the Russian Federation).

Thus, judicial review at the pre-trial stages of criminal proceedings is carried out in a procedure close in its structure to the procedure for considering a criminal case on the merits, which, in our opinion, is due, among other things, to the fact that in the course of any criminal proceedings, including judicial review, a single criminal procedural proof is carried out in terms of its objectives and means. At the same time, the procedure of judicial review in its content will always be more simplified, which is due to the specifics of the subject, goals and objectives of judicial review, as well as the fact that the principles of criminal procedure and the general conditions of judicial proceedings in the implementation of this function operate with the necessary restrictions.

In our opinion, it is necessary to highlight the following stages of the procedure for implementing judicial review:

- preparation for the court hearing;
- preparatory part of the court hearing;
- judicial investigation;
- final speeches of the participants in the court hearing;
- issuing a ruling and its announcement.

We do not single out the filing of a complaint/petition as an independent stage of the mechanism for implementing the court's competence, since at the time of their filing, judicial review is not yet carried out. It should be noted that science defines the reason that initiates judicial review activity in different ways. A.A. Endoltseva calls such a reason an appeal, the forms of which are a petition, complaint, notification (Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation) and a protocol (Part 3 of Article 118 of the Criminal Procedure Code of the Russian Federation). The concept of "appeal" is also used by A.S. Chervotkin[489]. V.V. Rudich proposes calling a petition of an official to apply a preventive measure to a suspect/accused a criminal claim[490].

[489] Chervotkin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2013. P. 62.
[490] Rudich V.V. Mechanism for applying preventive measures in Russian criminal proceedings: dis. ... Doctor of Law. Ekaterinburg, 2020. P.21.

While agreeing with the presence of a general legal nature in the specified forms of appeals, in relation to the main types of judicial review, we traditionally refer to such appeals as complaints and petitions, bearing in mind that the notification of a search carried out is in fact a petition for the implementation of subsequent judicial review of it.

Preparation for a court hearing should consist of the court checking the existence of a proper reason and grounds for the exercise of judicial review, checking the jurisdiction of the relevant complaint/petition to a specific court, requesting the necessary procedural documents and performing other procedural actions aimed at creating conditions for the consideration of the filed complaint or petition.

The preparatory part of the court hearing must in any case consist of the following procedural actions, which are also characteristic of the corresponding stage in the trial:

- opening of the court session and announcement of its subject;

- announcement of the composition of the court;

- establishing the identity of persons appearing at the court hearing and removing witnesses (if they appear) from the courtroom;

- explaining to participants in the court hearing their procedural rights, including the right to challenge;

- deciding on the possibility of continuing the court hearing in the absence of persons who failed to appear;

- resolution of motions not related to the essence of the relevant judicial review proceedings (motions to postpone a court hearing, to return a submitted complaint/motion to the applicant due to the presence of procedural obstacles to their consideration, motions to send the material to the appropriate jurisdiction, etc.)[491].

In science, there are points of view on judicial investigation as a substantive component of the procedure for considering a complaint/petition. In particular, S.I. Koneva notes that judicial investigation as the establishment of the circumstances of the case that are significant for the adoption of a judicial act takes place in various forms of

[491] Lukianov S.S. On the issue of determining the competence of the court to ensure the proper procedure of judicial control at the pre-trial stages of the criminal trial // Bulletin of the Siberian Law Institute of the Ministry of Internal Affairs of Russia. 2023. No. 4 (53). P. 64.

judicial review[492]. V.V. Rudich points out that the procedure, for example, of making a decision on the application of a preventive measure should be carried out in accordance with Chapter 37 of the Criminal Procedure Code of the Russian Federation (judicial investigation)[493].

We agree with the approaches given and believe that the important stage of consideration of a complaint/petition is precisely the judicial investigation. Despite the coincidence of this name with the name of the corresponding stage of consideration of a criminal case on the merits, it should be a guideline for the courts in that at this stage the court carries out procedural knowledge of the factual circumstances included in the subject of judicial review, in the form of proof.

The final speeches of the participants in the court hearing, as an analogue of the debate of the parties, are aimed at the analysis by these participants of the circumstances presented and the assessment of the evidence confirming or refuting them.

The court ruling and its announcement, as in the case of a final decision on a criminal case, must be accompanied by an explanation to the participants in the judicial review proceedings of the procedure for appealing them, the right to petition for participation in the consideration of the complaint/submission by the appellate court, the procedure for familiarizing themselves with the minutes of the court hearing and making comments on it (clauses 15, 16, part 3, Article 259; part 3, Article 309).

In our opinion, the judicial investigation and final speeches of the participants in the court session have not been sufficiently studied in science, in connection with which special attention in this study is paid to these stages. Let us turn to the results of the generalization of judicial practice regarding their content.

A study of the minutes of the court hearings showed that the sequence of speeches by the participants in the court hearing and the examination of the materials of the judicial review proceedings is presented in all sorts of variants.

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[492] Koneva S.I. On the issue of the judge's participation in proving during the implementation of judicial review during the preliminary investigation // Russian Judge. 2014. No. 4. P. 25.

[493] Rudich V.V. Mechanism for applying preventive measures in Russian criminal proceedings: dis. ... Doctor of Law. Ekaterinburg, 2020. P.21.

Thus, when the court considered petitions for detention in cases in which the preliminary investigation was carried out in the form of a preliminary investigation, the sequence of performing the specified procedural actions after the announcement of the petition was as follows:

- the investigator's speech, then the announcement of the materials presented[494], then the prosecutor's speech, then the defense's speech[495];

- investigator, defense, prosecutor, announcement of materials[496];

- investigator, defense, disclosure of materials, prosecutor[497];

- announcement of materials, investigator, defense, prosecutor[498];

- announcement of materials, investigator, prosecutor, defense[499];

- announcement of materials, defense, investigator, prosecutor[500].

When the court considered petitions for detention in cases in which the preliminary investigation was carried out in the form of an inquiry, the sequence of the performance of the specified procedural actions after the announcement of the petition was as follows:

- investigator, announcement of materials, prosecutor, defense[501];

- investigator, announcement of materials, defense, prosecutor[502];

- investigator, defense, disclosure of materials, prosecutor[503];

- announcement of materials, investigator, defense, prosecutor[504];

- announcement of materials, defense, investigator, prosecutor[505].

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[494] Since the courts defined the essence of their cognitive activity in different ways during the study of the materials of the relevant judicial review proceedings, here and below the general concept of "announcement" of materials is used.
[495] See, for example: material No. 3/1-143/2023 of the Pushkinsky District Court of St. Petersburg, material No. 3/1-148/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 8).
[496] See, for example: material No. 3/1-172/2023 of the Frunzensky District Court of St. Petersburg, material No. 3/1-141/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[497] See, for example: material No. 3/1-137/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[498] See, for example: material No. 3/1-117/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[499] See, for example: material No. 3/1-167/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 8).
[500] See, for example: material No. 3/1-170/2023 of the Frunzensky District Court of St. Petersburg, material No. 3/1-109/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[501] See, for example: material No. 3/1-134/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[502] See, for example: material No. 3/1-116/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[503] See, for example: material No. 3/1-152/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[504] See, for example: material No. 3/1-118/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).
[505] See, for example: material No. 3/1-161/2023 of the Frunzensky District Court of St. Petersburg, material No. 3/1-105/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 8).

Thus, at least 7 general variants of the sequence of speeches of the official who filed the petition, the other participants in the court hearing, and the announcement of materials by the court were identified.

In situations where the investigator participated in the court hearing, there were cases of the prosecutor announcing a motion to select a preventive measure, for example, according to material No. 3/1-167/2023[506], considered by the Frunzensky District Court of St. Petersburg. According to material No. 3/1-150/2023[507], considered by the same court, although the investigator participated in the court hearing, he did not speak out at all on the merits of the motion.

When studying the court archives' records of court hearings conducted in accordance with Part 5 of Article 165 of the Code of Criminal Procedure of the Russian Federation, only one case of direct participation of the defense in the court hearing was revealed[508]. In another case, the defense attorney submitted a written position to the court, in which he asked to recognize the search as illegal[509]. As a rule, only the prosecutor participated in the court hearing, and the official who filed the petition did not. However, there were cases when none of the parties participated in the court hearing[510].

When a prosecutor participates in a court hearing conducted in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation, in cases in which the preliminary investigation was carried out in the form of a preliminary investigation, the sequence of the above procedural actions was as follows:

- prosecutor, announcement of materials[511];

- announcement of materials, prosecutor[512].

When conducting a preliminary investigation in the form of an inquiry, the sequence of the said procedural actions was as follows:

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[506] See Appendix No. 8.
[507] See Appendix No. 8.
[508] See material No. 3/3-388/2023 of the Nevsky District Court of St. Petersburg (Appendix No. 10).
[509] See material No. 3/6-192/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 10).
[510] See, for example: material No. 3/3-133/2023 of the Frunzensky District Court of St. Petersburg, material No. 3/3-377/2021 of the Nevsky District Court of St. Petersburg, material No. 3/6-182/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 10).
[511] See, for example: material No. 3/3-366/2021 of the Nevsky District Court of St. Petersburg, material No. 3/6-3/2024 of the Pushkinsky District Court of St. Petersburg (Appendix No. 10).
[512] See, for example: material No. 3/6-28/2024 of the Pushkinsky District Court of St. Petersburg (Appendix No. 10).

- prosecutor, announcement of materials[513];

- announcement of materials, prosecutor[514].

When considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, officials whose actions are being appealed either spoke on the merits of the complaint filed[515], or only answered questions from participants in the court hearing[516], or did not participate in the consideration of the complaint at all[517].

In the event of an investigator speaking on the merits of a filed complaint, the sequence of speeches by participants in the court hearing on the merits and the reading out of materials was, as a rule, as follows: reading out of materials, applicant (representative), official whose actions are being appealed, prosecutor[518].

In cases where the investigator did not speak on the merits of the complaint filed, the sequence of speeches by other participants on its merits and the reading of materials was as follows:

- announcement of materials, applicant (representative), prosecutor[519];

- applicant (representative), prosecutor, announcement of materials[520].

The prosecutor usually participated in the court hearing held in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, but there were cases when the complaint was considered in his absence[521]. In some cases, the applicant was given the opportunity to speak twice: the first time, only expressing his attitude to the complaint after it was announced, the second time - on the merits[522].

The opportunity to make a rejoinder after the main speeches was usually provided to the participants of the court hearing when considering complaints in accordance with

[513] See, for example: material No. 3/3-390/2021 of the Nevsky District Court of St. Petersburg, material No. 3/6-183/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 10).
[514] See, for example: according to material No. 3/3-345/2021 of the Nevsky District Court of St. Petersburg, material No. 3/6-167/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 10).
[515] See, for example: material No. 3/10-77/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 9).
[516] See, for example: material No. 3/12-82/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 9).
[517] See, for example: material No. 3/12-87/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 9).
[518] See, for example: material No. 3/10-74/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 9).
[519] See, for example: material No. 3/12-82/2023 of the Pushkinsky District Court of St. Petersburg, material No. 3/10-109/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 9).
[520] See, for example: material No. 3/12-58/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 9).
[521] See, for example: material No. 3/10-86/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 9).
[522] See, for example: material No. 3/10-64/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 9).

Article 125 of the Criminal Procedure Code of the Russian Federation. When considering petitions of officials to choose a preventive measure in the form of detention, there were rare cases when the participants were also given the opportunity to make a rejoinder (although it is not directly provided for by law), for example, in materials No. 3/1-148/2023 and No. 3/1-148/2023, considered by the Frunzensky District Court of St. Petersburg[523]. In the latter case, the court also "provided the accused with the opportunity to make a final statement".

When an official participates in a court hearing conducted in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the court and other participants could ask him questions on the merits of the complaint[524]. There were cases when, during the consideration of a petition for the selection of a preventive measure in the form of detention, the official who filed it was also asked questions by the participants in the court hearing[525]. In all cases, the explanations of the official were not presented in the form of testimony; the rights, duties and responsibilities of the witness were not explained to him.

In various judicial review proceedings, there have been cases where the court submitted the order of the court hearing for discussion by its participants[526]. There have been cases where the court itself invited the participants in the court hearing to determine the sequence of their speeches. For example, in case No. 3/1-482/2021 on the selection of a preventive measure in the form of detention, a judge of the Nevsky District Court of St. Petersburg addressed the prosecutor with the following: "since the procedural interests of the prosecutor and the investigator may differ <…>, I ask the prosecutor to decide when he wants to speak out regarding the motion filed by the investigative bodies: after the investigator or after hearing the position of the defense attorney" [527].

[523] See Appendix No. 8.
[524] See, for example: material No. 3/10-227/2022 of the Nevsky District Court of St. Petersburg, material No. 3/12-59/2023 of the Pushkinsky District Court of St. Petersburg (Appendix No. 9).
[525] See, for example: material No. 3/1-472/2021 of the Nevsky District Court of St. Petersburg, material No. 3/1-166/2023 of the Frunzensky District Court of St. Petersburg (Appendix No. 8).
[526] See, for example: material of the Frunzensky District Court of St. Petersburg No. 3/1-163/2023 on the selection of a preventive measure in the form of detention (Appendix No. 8); material of the Frunzensky District Court of St. Petersburg No. 3/10-109/2023 on a complaint filed in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation (Appendix No. 9).
[527] See Appendix No. 8.

Thus, the generalization of judicial practice has shown that it is contradictory in terms of the sequence of performance and content of procedural actions at those stages of judicial review proceedings at which the main scope of the court's powers aimed at understanding the circumstances included in the subject of judicial review is implemented. Achieving the goals of judicial review is possible only in a situation where the relevant powers of the court will be implemented in a procedure that will allow the court to resolve the issue posed to it in the most effective and fair way, with the provision of the necessary procedural guarantees to the participants in the judicial review proceedings.

Moving on to the formation of our position regarding the content of the central stages of consideration of a complaint/petition, we note that we agree with A.A. Ustinov that one of the distinctive features of the criminal procedural activity of the court during pre-trial proceedings compared to the consideration of a criminal case on the merits is the smaller number of persons involved in the judicial review procedure, whose participation in the court hearing itself is not mandatory[528]. At the same time, the absence of one or more of them during the consideration of a complaint or petition does not detract from the model of the sequence of procedural actions proposed by us, but only means that they will not speak at the appropriate moment of the judicial review proceedings.

In our opinion, the judicial investigation should begin with the applicant's speech (if he/she participates in the court session), since it forms the limits of the judicial control proceedings, just as the presentation of the charges by the state prosecutor forms the limits of the trial when considering a criminal case on the merits (Article 273 of the Criminal Procedure Code of the Russian Federation). In addition, in his/her speech, the applicant may, for example, refuse a number of demands.

The question arises about the content of such a speech, in particular, whether it should reflect only the general position of the applicant on the initiated judicial review proceedings (supports, objects, leaves the issue to the discretion of the court, etc.) or also contain a justification for such a position.

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[528] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. P. 56.

According to Part 3 of Article 214.1 of the Criminal Procedure Code of the Russian Federation and paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 01.06.2017 No. 19 “On the practice of considering by courts petitions for investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)”, the court examines the submitted materials after the person who filed the complaint/petition “substantiates them”.

This approach should be recognized as erroneous, since justification as an element of argumentation consists of confirming the arguments presented with specific case materials, which is impossible in a situation where the relevant materials have not yet been examined by the court. In this regard, the applicant's speech at the beginning of the trial should contain only his attitude to the complaint/petition filed.

The question also arises as to whether other participants in the court hearing can speak immediately after the applicant, or whether they should be granted this right after the evidence has been examined.

In the court of first instance, such a right is granted only to the defense (Part 2 of Article 273 of the Criminal Procedure Code of the Russian Federation), in the court of appeal - to all participants in the court hearing (Part 4 of Article 389.13 of the Criminal Procedure Code of the Russian Federation). Part 3 of Article 214.1 of the Criminal Procedure Code of the Russian Federation and paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 "On the practice of considering petitions by courts for investigative actions related to the restriction of constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)" contain a provision according to which persons other than the applicant are heard only after the materials submitted have been examined.

This approach should also be recognized as erroneous, since the unified logic of the cognitive process assumes that its most effective flow can be ensured by providing its participants with the opportunity to convey their position to the court, in the light of which the presented evidence will subsequently be examined.

Thus, the participants of the court hearing should be given the opportunity to speak twice. First, they express their attitude to the filed complaint/petition, with the applicant speaking first, and after the examination of the evidence is completed, the participants speak on the merits.

After brief speeches by the participants in the court hearing, the court proceeds directly to the examination of the evidence. First, the court must announce the materials presented to it, and then decide on their supplementation, and allow motions on the need to carry out investigative and other procedural actions, taking into account the limits of its competence to participate in the process of proof. At the same time, the persons participating in the relevant procedural actions must be explained their procedural rights, obligations and responsibilities. For example, when questioning a witness, the provisions of Article 51 of the Constitution of the Russian Federation and Article 56 of the Criminal Procedure Code of the Russian Federation are explained to him, he is warned of criminal liability under Articles 307, 308 of the Criminal Code of the Russian Federation.

S.V. Nikitina notes that persons present at the court hearing (investigator, inquiry officer, prosecutor, head of the investigative body, participants from the prosecution or defense) may provide explanations both on their own initiative and on the initiative of the court, within the framework of which they inform the court of the circumstances and their arguments on the stated claims[529]. S.I. Koneva also notes that the in-person nature of the judicial investigation assumes that explanations for any acts of pre-trial proceedings presented as evidence by the prosecution are given by the officials who prepared them[530]. N.A. Kolokolov, with regard to the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, indicates that in order to clarify the position of the parties, the judge grants the participants in the court hearing the right to ask each other questions; if necessary, questions may also be asked by the court[531].

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[529] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.125.

[530] Koneva S.I. On the issue of the judge's participation in proving during the implementation of judicial review during the preliminary investigation // Russian Judge. 2014. No. 4. P. 26.

[531] Kolokolov N.A. Methodology for Conducting Basic Judicial Control Actions at the Preliminary Investigation Stage. 2nd ed., revised and enlarged. Moscow, 2015. Part 2. P. 144.

We support the above points of view in relation to all types of judicial review not only because such questions are actually asked in practice during their implementation, but also because obtaining an answer to them may be procedurally necessary and correspond to the tasks of judicial review. For example, when deciding on the extension of the term of detention, the court is obliged to investigate whether there was any red tape in the case[532], for which the investigator may be asked questions about the reasons why the planned procedural actions were not carried out, as well as about the time required to carry them out. Questions may be asked to the investigator not only by the court, but also by other participants in the court hearing, which follows from the principle of adversarial proceedings.

In science and practice, the problem of the status of explanations given by the investigator arises. For example, S.I. Koneva believes that the investigator, the inquirer can be interrogated on the essence of the information set out in the acts of pre-trial proceedings[533].

We cannot agree with this position. The explanations given by the investigator cannot be clothed in the procedural form of testimony, since this will lead to a mixture of different procedural statuses in one person, and will also exclude the possibility for the investigator to continue the investigation. Thus, the investigator has the right to give only his own explanations on the materials of the judicial review proceedings examined by the court. At the same time, the investigator does not have the right to refuse to answer the question put to him if the court recognizes the receipt of such an answer as procedurally necessary. An exception may be made for explanations, the impossibility of giving which is justified by the investigator by the need to keep them secret from one of the participants in the judicial review proceedings.

For the reasons stated, in our opinion, an official of the inquiry body who carries out operational-search activities on the relevant criminal case or the material of verification of the report of a crime cannot be interrogated as a witness during judicial

[532] Clause 22 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 “On the practice of applying by courts the legislation on preventive measures in the form of detention, house arrest, bail and prohibition of certain actions” // RLS “Consultant Plus”.

[533] Koneva S.I. On the issue of the judge’s participation in proving during the implementation of judicial review during the preliminary investigation // Russian Judge. 2014. No. 4. P. 26.

review proceedings. Such a person can be summoned to the court hearing only to provide explanations.

After the examination of evidence is completed, the court moves on to the final speeches of the participants in the court session. The question arises about the sequence of such speeches.

S.V. Nikitina believes that in various judicial review proceedings, the applicant should be the first to speak with explanations, after which the court has the right to recognize any sequence of speeches by the participants as appropriate[534]. For example, with regard to the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, N.A. Kolokolov points out that the last of the participants in the process to appear are the head of the investigative body (the superior head of the investigative body), the prosecutor (the superior prosecutor), since the said participants in the trial are empowered to promptly eliminate any procedural violations committed by the inquirer, investigator, or subordinate prosecutor[535].

We partially agree with the above positions, but we believe it is necessary to make a number of clarifications. In our opinion, in any judicial review proceeding, the initiator should be the first to speak. This is due to the general logic of cognitive activity. The agreement or disagreement of other participants in the court session with the applicant's position and his arguments should be expressed by them only after this position has been communicated to them and to the court.

Within the framework of such types of judicial review as the selection and extension of the term of preventive measures, as well as the granting of permission to carry out investigative actions, similar to the debate of the parties during the consideration of a criminal case on the merits (Part 3 of Article 292 of the Criminal Procedure Code of the Russian Federation), the last to speak are the participants in the proceedings on the part of the defense, which is due to the focus of the relevant proceedings on limiting the

[534] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.125-126.
[535] Kolokolov N.A. Methodology for Conducting Basic Judicial Control Actions at the Preliminary Investigation Stage. 2nd ed., revised and enlarged. Moscow, 2015. Part 2. P. 144.

constitutional rights of the suspect/accused, who is forced to defend himself against the submitted petition.

Similar logic applies to situations where judicial review proceedings affect the interests of a person who is not acting on the defense side, for example, when checking the legality of a search of a witness. In such cases, the right to speak last should belong to the participant whose rights and legitimate interests are affected by the relevant judicial review proceedings.

The selection of such a participant is consistent with the opinion expressed in science that participants in proceedings for the consideration of complaints have a special procedural status, different from the legal status of participants in criminal proceedings, which is due to the specifics of the subject of the complaint proceedings[536].

The official (body) whose decisions, actions (inactions) are appealed is obliged to prove their legality and validity. This is the opinion of the majority of researchers, including E.V. Noskova [537], V.M. Petrovets [538], A.N. Ryzhikh [539]. A.A. Ustinov differentiates the burden of proof, noting that the obligation to prove the arguments of the complaint and the circumstances set out in it is imposed on the applicant, and the burden of proving the legality and validity of the appealed decisions, actions (inactions) lies with the relevant officials[540].

This circumstance necessitates the final speech of the participants in the court hearing, vested with powers, only after the applicant has spoken on the merits of the complaint.

The question arises about the moment of the prosecutor's speech at the court hearing.

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[536] Noskova E.V. Proceedings for consideration and resolution of complaints by the court in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation: author's abstract ... diss. candidate of legal sciences. Tomsk. 2011. P. 9.

[537] Noskova E.V. Limits of judicial proceedings in special proceedings on complaints considered by the court in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation // Criminal Justice. 2013. No. 2. P. 32.

[538] Petrovets V.M. Forms and limits of court resolution of issues in pre-trial proceedings in Russian criminal proceedings: diss. ... candidate of legal sciences. Tyumen, 2007. P.153.

[539] Ryzhikh A.N. Powers of the court at pre-trial stages of criminal proceedings: diss. ... candidate of legal sciences. Ekaterinburg, 2008. P.142-143.

[540] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: dis. ... candidate of legal sciences. Moscow, 2022. P.127.

At the legislative level, this issue has not been resolved. Part 6 of Article 108 of the Criminal Procedure Code of the Russian Federation allows the prosecutor to justify a petition at the beginning of a court hearing (in science, this rule also applies to the procedure for considering petitions for permission to carry out investigative actions[541]). From Part 5 of Article 463 of the Criminal Procedure Code of the Russian Federation, which regulates the appeal of the decision of the Prosecutor General of the Russian Federation on extradition, it follows that the prosecutor is the last to speak on the complaint.

The Plenum of the Supreme Court of the Russian Federation formulated its position on this issue only in relation to the court's permission to carry out individual investigative actions. Thus, from paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 "On the practice of considering petitions by courts for investigative actions related to the restriction of constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)" it follows that the prosecutor must be the last to speak before the court retires to the deliberation room.

K.A. Rygalova notes that the legislator, giving the prosecutor the opportunity to substantiate the petition filed in accordance with Article 108 of the Criminal Procedure Code of the Russian Federation, considers him as a party to the prosecution, while the author points out that the prosecutor participating in such court hearings actually implements the function of supervision over the procedural activities of the investigator and inquiry officer assigned to him. K.A. Rygalova comes to the conclusion that the prosecutor must give an opinion on the legality and validity of the petition filed with the court for the application of preventive measures or for the performance of investigative actions, as well as on the legality and validity of actions (inactions) or decisions when considering complaints about them [542]. I.S. Bobrakova [543], A.V. Kvyk [544], U.V.

[541] See, for example: Chervotkin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... candidate of legal sciences. Moscow, 2013. Pp. 202-203.
[542] Rygalova K.A. Activities and role of the prosecutor in the implementation of judicial control in pre-trial proceedings in criminal cases: author's abstract. dis. ... candidate of legal sciences. Saratov, 2018. Pp. 11-13.
[543] Bobrakova I.S. Use of the mechanism of optional judicial review by a lawyer to ensure the rights and legitimate interests of an individual in pre-trial proceedings: diss. ... candidate of legal sciences. Nizhny Novgorod, 2010. P. 91, 135.
[544] Kvyk Alexander Valerievich. Preventive measures chosen on the initiative of the court at the stage of preliminary investigation: dis. ... candidate of legal sciences. Moscow, 2023. P. 131.

Sadyokova[545], A.A. Ustinov[546] and other researchers draw attention to the prosecutor's presentation of an opinion, first of all, regarding petitions filed by officials.

In our opinion, the approaches presented should be partially agreed with. Thus, the answer to the question about the moment of the prosecutor's speech depends on whether he gave consent to the initiation of the relevant judicial review proceedings or not, which is determined by the form of the preliminary investigation: the prosecutor's consent is required if the preliminary investigation is carried out in the form of an inquiry, and is not required if a preliminary investigation is being conducted in the case (clause 5, part 2, article 37 of the Criminal Procedure Code of the Russian Federation).

The prosecutor's giving of his consent, covering the motives and grounds for the relevant motion, presupposes that the prosecutor has studied the materials substantiating such a motion. This circumstance makes the prosecutor a full-fledged subject of the judicial contest and allows him the opportunity to speak first, both at the beginning of the judicial investigation (by expressing his attitude to the stated motion), and first with the final speech in the series of other participants of the prosecution.

On the contrary, in the case where the relevant motion is filed by the investigator, the prosecutor actually makes a conclusion on the results of the judicial review proceedings. This is also guided by the provisions of paragraph 1.8 of the Order of the Prosecutor General's Office of the Russian Federation dated September 17, 2021 No. 544 "On the organization of prosecutorial supervision over the procedural activities of preliminary investigation bodies" [547]. Thus, in the situation under consideration, the prosecutor must act last in a series of other participants in the prosecution.

Taking into account the above, the position of K.A. Rygalova that the prosecutor's disagreement with a motion to apply a preventive measure or to permit an investigative action, expressed in a court hearing, should essentially mean the withdrawal of such a

[545] Sadiokova U.V. Procedural powers of the head of the investigative body: theory and practice of implementation: author's abstract. dis. ... candidate of legal sciences. Moscow, 2020. P.17.
[546] Ustinov A.A. Proof during consideration by the court of materials of a criminal case during pre-trial proceedings: diss. ... Cand. of legal sciences. Moscow, 2022. Pp. 145, 166.
[547] Order of the Prosecutor General's Office of the Russian Federation dated September 17, 2021 No. 544 "On the organization of prosecutorial supervision over the procedural activities of preliminary investigation bodies" // RLS "Consultant Plus".

motion[548], should be accepted only in the situation of an inquiry. At the same time, if the prosecutor's lack of consent at the time of filing the motion, as a remediable defect, entails the return of the motion to the applicant, then the prosecutor's disagreement expressed in a court hearing, in fact, does mean the withdrawal of such a motion and, from the point of view of the classification of court decisions, should entail the termination of proceedings on it. The said disagreement may be expressed at any stage of the judicial review proceedings before the court retires to the deliberation room.

In the case of a preliminary investigation in the form of a preliminary investigation, the position of the prosecutor, expressed in the conclusion, may not coincide with the position of the investigator, set out in the petition.

It is necessary to agree with the position of V.M. Petrovets that when considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the prosecutor is heard last[549], which is due to the prosecutor's speech with a conclusion in this type of judicial control, regardless of the form of preliminary investigation. At the same time, in the order of prosecutorial supervision, the prosecutor is authorized to recognize the contested actions (inaction) or decisions as illegal at any stage of the court's consideration of the submitted complaint, which should also entail, as a general rule, the termination of proceedings on it.

The issue of the sequence of speeches of other participants in the proceedings who are procedurally on the same side, for example, the victim, the investigator and the head of the investigative body when deciding on a measure of restraint (if they participate in the court hearing), should, in our opinion, be decided by analogy with the debates of the parties. The sequence of such speeches is determined by the court (Article 292 of the Criminal Procedure Code of the Russian Federation).

In the event of a preliminary investigation being carried out in the form of a preliminary investigation, the court, as a general rule, when making a decision is not authorized to take into account additional grounds and arguments in favor of limiting the

[548] Rygalova K.A. Activities and role of the prosecutor in the implementation of judicial control in pre-trial proceedings in criminal cases: author's abstract. dis. ... candidate of legal sciences. Saratov, 2018. Pp. 11-13.
[549] Petrovets V.M. Forms and limits of court resolution of issues in pre-trial proceedings in Russian criminal proceedings: diss. ... candidate of legal sciences. Tyumen, 2007. P.135.

constitutional rights of citizens that are not specified in the resolution on the initiation of the relevant petition, but are presented by the investigator in the court hearing.

This rule is due to the fact that the relevant petition is filed by the investigator with the consent of the head of the investigative body (Part 3 of Article 108 of the Criminal Procedure Code of the Russian Federation, Part 2 of Article 109 of the Criminal Procedure Code of the Russian Federation, Part 1 of Article 165 of the Criminal Procedure Code of the Russian Federation). According to Part 3 of Article 108 of the Criminal Procedure Code of the Russian Federation, the decision to initiate a petition shall set out the reasons and grounds due to which it became necessary to take the suspect or accused into custody and it is impossible to choose another preventive measure. Thus, the consent of the head of the investigative body covers not only the grounds, but also the arguments (motives) of the relevant petition.

In this regard, the expansion of the grounds and arguments of his petition by the investigator during his speech in court would mean their statement before the court in the absence of the consent of a superior official, which contradicts the stated requirements of the law (the investigator can only narrow the list of circumstances that, in his opinion, are grounds for limiting the constitutional rights of citizens). An exception can be recognized as the direct participation of the head of the investigative body in the court hearing, in which he can express his consent.

The grounds and arguments of the motion filed by the investigator may be expanded at the court hearing, provided that the prosecutor participating in it expresses his consent to this.

In relation to the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, neither the investigator nor the inquiry officer has the right to expand or otherwise change the grounds and motives for the adoption of the contested decision or the commission of the contested action (inaction), since it has already been adopted/committed. Any other approach would contradict the principle of legality (Article 7 of the Criminal Procedure Code of the Russian Federation) and would violate the requirements of the criminal procedural form.

It is not clear from the current criminal procedure regulation whether the participants in the court hearing have the right to make a reply. The legislator resolves this issue only in relation to the consideration of complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, according to the provisions of which the applicant is given the opportunity to make a reply (Part 4 of Article 125 of the Criminal Procedure Code of the Russian Federation). S.V. Rudakova considers granting such a right only to the applicant to be a gap[550]. S.V. Nikitina extends the right of interested parties to make a reply to the consideration by the court of petitions for a preventive measure[551].

In our opinion, the right to make a reply belongs to all participants in the court session in any judicial review proceedings, which is due to the principles of adversarial proceedings and equality of the parties, which imply the possibility of participants in the court session to express their objections to the arguments presented by the opposing party. In addition, as follows, for example, from paragraph 13 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 1 "On the practice of considering complaints by courts in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation", the right to participate in the court session also includes the right to become familiar with the position of other persons, to give explanations on this matter, which in itself implies the possibility of each participant in the court session to make a reply to what was said by other participants. For the same reasons, participants in the court session should also have the right to make a reply after the prosecutor has delivered his conclusion.

A.S. Chervotkin notes that the person against whom proceedings are being conducted to bring him to criminal liability is in all cases given the opportunity to make a reply last in judicial review proceedings[552]. In our opinion, this rule should be extended to all types of judicial review carried out on petitions to limit the constitutional rights of

[550] Rudakova S.V. Criminal procedural appeal and its system in domestic pre-trial proceedings: dis. ... Doctor of Law. Krasnodar, 2023. P.348.
[551] Nikitina S.V. Evidentiary activity of the court when making procedural decisions in pre-trial proceedings in criminal cases: diss. ... candidate of legal sciences. Ulyanovsk, 2022. P.176.
[552] Chervtokin A.S. Interim court decisions and the procedure for their review in Russian criminal proceedings: diss. ... Cand. of legal sciences. Moscow, 2013. Pp. 202-203.

citizens, and should be applied to the person against whom the question of limiting his rights has been raised.

When considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, the last to speak with responses, as in the main final speeches, must be the officials whose decisions and actions (inactions) are being appealed.

After the conclusion of the final speeches of the participants in the court hearing, including speeches with responses, the court retires to the deliberation room to make a decision.

Considering that the general conditions of judicial proceedings must apply to judicial review proceedings with the necessary limitations, the final decision of the court on the relevant judicial review proceedings must always be made in a deliberation room, similar to the procedure for making a final decision on a criminal case (Articles 295, 298 of the Criminal Procedure Code of the Russian Federation).

The procedure for issuing interim court decisions is subject to the requirements of Article 256 of the Criminal Procedure Code of the Russian Federation. For example, court decisions on the challenge of a participant in judicial review proceedings, on the appointment of an expert examination must be made in the deliberation room. The same procedure, in our opinion, must be observed when making decisions on returning a complaint/petition to the applicant and on sending them according to jurisdiction, since these decisions only entail a temporary impossibility of considering the complaint/petition.

In judicial review proceedings, publicity is a general condition of the trial (Article 241 of the Criminal Procedure Code of the Russian Federation). Thus, the current legal regulation proceeds from the fact that the main judicial review proceedings, as a general rule, must be carried out in an open court session, with the exception of the cases listed in Part 2 of Article 241 of the Criminal Procedure Code of the Russian Federation. This is indicated in Part 3 of Article 125 of the Criminal Procedure Code of the Russian Federation, paragraph 28 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2013 No. 41 "On the practice of applying the legislation on

preventive measures in the form of detention, house arrest, bail and prohibition of certain actions by the courts", paragraph 6 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 01.06.2017 No. 19 "On the practice of considering by the courts petitions for investigative actions related to the restriction of the constitutional rights of citizens (Article 165 of the Criminal Procedure Code of the Russian Federation)".

At the same time, not all researchers agree with the stated position of the legislator and the Supreme Court of the Russian Federation. For example, A.P. Lipinsky speaks out for the implementation of various judicial review proceedings in a closed court session[553]. A.A. Endoltseva[554], Yu.B. Plotkina[555], G.S. Rusman[556]propose that the court consider the issue of a preventive measure in a closed court session. E.A. Bagavieva[557], N.A. Kolokolov[558], I.R. Khromenkov[559] and other researchers speaks out for the consideration of a petition for permission to carry out an investigative action in a closed court session.

There are other approaches in the scientific literature. For example, T.A. Andryushchenko believes that the consideration of the investigator's petition for permission to carry out an investigative action should be carried out in a public procedure[560].

The need to consider complaints in an open court session, as a rule, does not meet with objections from representatives of the scientific community.

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[553] Lipinsky A.P. Ensuring the inadmissibility of disclosure of pre-trial proceedings data: dis. ... Cand. of legal sciences. Izhevsk, 2023. P. 13, 181, 190, 191.

[554] Endoltseva A.A. Judicial control procedures in pre-trial proceedings in a criminal case: diss. ... Cand. of legal sciences. Moscow, 2023. P.131, 210.

[555] Plotkina Yu.B. Application of preventive measures chosen by a court decision at the stage of preliminary investigation: author's abstract. dis. ... candidate of legal sciences. Moscow, 2010. P.9.

[556] Rusman G.S. Judicial control over the application of preventive measures in the form of detention, house arrest: author's abstract. dis. ... candidate of legal sciences. Chelyabinsk, 2006. P.9.

[557] The author expresses his position in relation to such an investigative action as obtaining information about connections between subscribers and (or) subscriber devices (see: Bagavieva E.A. Obtaining information about connections between subscribers and (or) subscriber devices in the system of criminal procedural actions: author's abstract. dis. ... candidate of legal sciences. Kazan, 2023. P. 13).

[558] Kolokolov N.A. Methodology for conducting the main judicial control actions at the stage of preliminary investigation. 2nd ed., revised and enlarged. Moscow, 2015. Part 2. P. 17.

[559] Khromenkov I.R. Ensuring legal interests by the court in the pre-trial stages of Russian criminal proceedings: author's abstract. dis. ... candidate of legal sciences. Moscow, 2022. P.17.

[560] Andryushchenko T.I. The court as a subject of proof in criminal proceedings: diss. ... candidate of legal sciences. Volgograd, 2012. P.119, 121.

In our opinion, it follows from the requirement of publicity that judicial review proceedings, as a general rule, must be carried out in an open court session, which may be closed on the same grounds on which the consideration of a criminal case on the merits is subject to closure; they are listed in Part 2 of Article 241 of the Criminal Procedure Code of the Russian Federation.

In particular, a court hearing is subject to closure due to the need to maintain a secret protected by law, which includes the secret of the preliminary investigation (Article 161, paragraph 1, part 2, Article 241 of the Criminal Procedure Code of the Russian Federation). At the same time, the court does not have the authority to close a court hearing due to the need to ensure the secret of the preliminary investigation on its own initiative, since this would mean the court assuming the function of criminal prosecution, which is not its proper function, since, as follows from the systematic interpretation of Articles 38, 41 and 161 of the Criminal Procedure Code of the Russian Federation, determining the limits of this secret is within the exclusive procedural authority of the official conducting the preliminary investigation. Thus, the court may close a court hearing on the above-mentioned grounds in whole or in part only upon the petition of the relevant officials.

At the same time, the regulation of the procedure for the court to resolve petitions for investigative actions, as provided for in Article 165 of the Criminal Procedure Code of the Russian Federation, is subject to change.

In the course of the survey, 60.7% of judges indicated that they usually hold court hearings to consider these petitions in an open mode. A similar answer, in relation to their own practice, was given by 41% of prosecutors and 18.2% of investigators[561]. Thus, the percentage of open court hearings within the framework of this type of judicial review is quite high.

We cannot agree with this practice, since when filing and considering a petition for permission to conduct an investigative action, it is necessary to ensure the secrecy of its preparation and the surprise of its implementation for interested parties, which is intended

[561] See Appendices No. 2-4.

to exclude the possibility of these persons preventing the receipt of evidentiary information in conditions of their awareness, for example, of an upcoming search. In this regard, the court must decide to close a court hearing held on such petitions on its own initiative, and the legislation in this part is subject to change.

At the same time, in a situation where an investigative action has already been carried out, and therefore the secret of its conduct has been revealed, the court must, as a general rule, consider the issue of the legality of such an investigative action in an open court session.

Based on the general conditions of judicial proceedings, during any judicial review proceedings, a written protocol and an audio protocol of the court hearing must be kept in accordance with Article 259 of the Criminal Procedure Code of the Russian Federation. When a court hearing is held in closed mode, an audio protocol is not kept. Participants in these proceedings must be explained the right to familiarize themselves with the protocol and audio protocol of the court hearing and to make their comments on them.

The procedure for implementing various judicial review proceedings that we have proposed combines the features of unification and differentiation and is the procedural environment in which, in our opinion, the powers of the court to participate in the process of proof and to make procedural decisions can be most effectively implemented, which is a necessary condition for achieving the goal of judicial review - the protection of the constitutional rights and freedoms of citizens at the pre-trial stages of criminal proceedings.

CONCLUSION

Judicial control at the pre-litigation stages of the criminal procedure is a necessary means of protecting the constitutional rights and freedoms of participants in criminal proceedings.

This institution is subject to constant reform, but the court’s competence in its implementation has not yet been systematically enshrined in legislation and has not achieved a sufficient level of uniformity in its application in practice.

A comprehensive definition of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure serves the purpose of increasing its effectiveness in solving the problems of criminal proceedings.

The study of this competence allowed us to draw a number of conclusions.

1. The competence of the court in exercising judicial control at the pre-litigation stages of the criminal procedure represents a set of powers of the court to consider judicial control proceedings by establishing, by criminal procedural means, the circumstances included in the subject of judicial control, and making procedural decisions during and based on the results of these proceedings.

2. The structure of the court's competence in exercising judicial control includes the following elements: 1) the court's powers to participate in the process of proof, including the powers to carry out investigative and other procedural actions; 2) the court's powers to make procedural decisions.

3. The limits of the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure are the totality of the court's powers sufficient to establish the circumstances included in the subject of judicial control and to consider the filed complaint or filed petition.

4. The prerequisites for the formation of the court's competence in the implementation of judicial control at the pre-litigation stages of the criminal procedure are the goals and objectives of judicial control activities, as well as the specifics of its subject matter.

5. The mechanism for implementing the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure is a system of procedural actions of the court consisting of successive stages for the application of criminal procedural rules that establish the content and scope of its competence to exercise judicial control at the pre-litigation stages of the criminal procedure.

The mechanism for implementing the court's competence in exercising judicial control at the pre-litigation stages of the criminal procedure consists of the following elements: 1) the norms of criminal procedural law that establish the content and scope of the court's competence; 2) a system of procedural actions of the court (procedure) consisting of successive stages, in which these norms are implemented.

6. With regard to various types of judicial control, the court has a general, unified competence. The scope and limits of this competence are determined by its relationship with the exclusive competence of the court resolving the criminal case on the merits.

The distinctive features of the court's competence in exercising judicial control are:

- the specifics of the subject of judicial control;

- features of the goals and objectives of the procedural function carried out by the court;

- the level (degree) of proof of the circumstances included in the subject of judicial control;

- types of decisions taken and their prejudicial nature;

- features of the mechanism for implementing competence.

7. The means of proof used by the court for the circumstances included in the subject of judicial control are the same for the consideration of judicial control proceedings and for the consideration of a criminal case on the merits.

The establishment of circumstances included in the subject of judicial control is carried out by means of criminal procedural proof in accordance with the general provisions on evidence and proving contained in Chapters 10 and 11 of the Criminal Procedure Code of the Russian Federation , while the court is authorized to carry out any investigative and other procedural actions provided for in Chapter 37 of the Criminal Procedure Code of the Russian Federation. At the same time, the limits of the court's

competence to participate in the process of proof are limited by the preliminary nature of the decisions taken, due to the existence of various levels (degrees) of proof during the succession of stages of criminal proceedings, the rule on the secrecy of the preliminary investigation, and the volume of materials submitted to the court.

When exercising judicial control, the court is authorized to receive new evidence only within the framework of such an element of proof as verification of already existing evidence. The only exceptions are the actions of the court caused by the legal inequality of the parties to the proceedings.

Evidence obtained by the court may be provided to an official of the preliminary investigation body upon his request.

8. Court decisions, based on the criterion of their relation to the result of judicial control proceedings, are divided into final and interim.

Final decisions are those that conclude the consideration of a complaint/petition or block further progress. Final decisions are divided into decisions made on the merits of the complaints/petitions filed and decisions that are not made on the merits of the complaints/petitions filed.

On the merits of the complaints/petitions filed, the court is authorized to make two types of decisions:

1) A decision to satisfy the complaint/petition in whole or in part.

2) Decision to refuse to satisfy the complaint/petition.

The court is authorized to make two types of decisions on complaints/petitions not based on the merits:

1) A decision to refuse to accept a complaint/petition for proceedings - in the absence of grounds for exercising judicial control over the legality and validity of the restriction of citizens' constitutional rights, which was revealed at the stage of accepting the complaint/petition for proceedings (before the court hearing on them is scheduled), as well as when withdrawing the complaint/petition at this stage. The issuance of this decision prevents the complaint/petition from being re-filed in court.

2) A decision to terminate proceedings on a complaint/petition – in the absence of grounds for exercising judicial control over the legality and validity of the restriction of

citizens' constitutional rights, which was revealed at the stage of proceedings on a complaint/petition, as well as in the event of withdrawal of the complaint/petition at this stage. The issuance of this decision prevents the re-filing of the complaint/petition to the court. This decision can only be made at a court hearing.

Interim decisions are those that do not complete the review and do not block further progress of the complaint/petition. Interim decisions are divided into decisions taken in the event of temporary impossibility of reviewing the complaint/petition and other interim decisions.

Interim decisions taken in the event of a temporary impossibility of considering a complaint/petition include:

1) The decision to return the complaint/petition – if there is a defect in the reason for the exercise of judicial control, which is the complaint or petition itself, as well as in the event of a violation of the rules of jurisdiction of the relevant petition, provided that the official did not offer the court his choice within the framework of alternative jurisdiction. The decision to return the complaint/petition to the applicant may be made both before and after the commencement of proceedings on them, in the latter case it can only be made at a court hearing. The decision to return the complaint/petition implies the possibility of re-applying to the court after the identified deficiencies have been eliminated.

2) A decision to transfer a complaint/petition to a jurisdiction – if a violation of the rules of jurisdiction is established both before and after the commencement of proceedings on the complaint, as well as if a violation of the rules of jurisdiction is established after the commencement of proceedings on the relevant petition of an official, provided that he/she has proposed to the court his/her choice within the framework of alternative jurisdiction. A decision to transfer a complaint/petition to a jurisdiction after they have been accepted for proceedings may only be made at a court hearing.

Other interim decisions include court decisions on the performance of individual investigative and other procedural actions, decisions on the postponement of a court hearing, on the extension of the period of detention, on recusal, and others.

Decisions made based on the results of judicial control activities do not have a prejudicial effect on the court resolving the criminal case on the merits.

9. The unity of the court's competence in exercising judicial control also determines the unity of the mechanism for its implementation. The unified model of the procedure for judicial control proceedings consists of the following stages:

- preparation for the court hearing;
- preparatory part of the court hearing;
- judicial investigation;
- final speeches of the participants in the court hearing;
- awarding judgement and its announcement.

The general conditions of judicial proceedings apply to judicial control proceedings, while acting with the necessary restrictions due to the specifics of the goals, objectives and subject of judicial control activities.

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Appendix 1

Results of the survey of advocates

In total, 54 lawyers (from various regions of the Russian Federation) were surveyed between October 2023 and March 2024, 50 of whom indicated that they took part in court hearings held in the order of judicial review.

Accordingly, the percentage of responses was calculated from the number 50. Percentages were rounded to tenths.

Some of the respondents' answers in the "other (indicate your answer option)" column essentially coincided with the answer options proposed by the author of the questionnaire, and therefore the number of people who gave such answers was added to the total number of people who chose the corresponding proposed answer.

1. In your opinion, should the court, when exercising judicial review, evaluate the evidence presented by the parties in its decision?

Yes, I should.	74% (37 people)
No, it should not, since the court evaluates evidence only when considering the merits of a criminal case.	26% (13 people)
Other (indicate your answer)	0%

2. When exercising judicial review, do you file motions for investigative actions (interrogations, inspections, etc.)?

I do not declare	42% (21 people)
I say this often	10% (5 people)
I declare sometimes	48% (24 people)

3. If the motions specified in the previous paragraph were filed, did the court grant such motions?[562]

Didn't satisfy	34.5% (10 people)
Satisfied often	17.2% (5 people)
Satisfied sometimes	48.3% (14 people)

[562] The percentage of answers to this question is calculated from the number 29 (5 + 24 people).

4. In your opinion, is the court authorized to question witnesses when exercising judicial review?

Yes, I am authorized.	70% (35 people)
No, I am not authorized to do so, but I can receive explanations (clarifications) from them that are not presented in the procedural form of testimony.	26% (13 people)
Other (indicate your answer)	4% (2 people): 1) "he interrogated in our practise"; 2) “Such powers of the court are not directly provided for by either legislation or judicial practice, however, for the defense attorney this is the only opportunity to legalize information obtained from witnesses.”

5. When considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions ...

	…it is permissible for the court to produce	…were produced in your practice
Appointment of a forensic examination	28% (14 people)	2% (1 person)
Interrogation of a witness	56% (28 people)	26% (13 people)
Interrogation of an expert	34% (17 people)	4% (2 people)
Interrogation of a specialist	40% (20 people)	12% (6 people)
Interrogation of a suspect/accused	50% (25 people)	20% (10 people)
Inspection of material evidence	32% (16 people)	0%
Inspection of the area and premises	18% (9 people)	2% (1 person)
Investigative experiment	12% (6 people)	2% (1 person)
Presentation for identification	12% (6 people)	0%
Examination	14% (7 people)	0%
Retrieval of items and documents	72% (36 people)	38% (19 people)

6. When considering petitions from officials to select and extend the period of validity of preventive measures, which of the listed investigative and other procedural actions ...

	…it is permissible for the court to produce	…were produced in your practice
Appointment of a forensic examination	14% (7 people)	0%
Interrogation of a witness	66% (33 people)	38% (19 people)
Interrogation of an expert	30% (15 people)	2% (1 person)
Interrogation of a specialist	36% (18 people)	10% (5 people)
Interrogation of a suspect/accused	56% (28 people)	24% (12 people)
Inspection of material evidence	24% (12 people)	4% (2 people)
Inspection of the area and premises	12% (6 people)	0%
Investigative experiment	8% (4 people)	0%
Presentation for identification	8% (4 people)	0%
Examination	12% (6 people)	0%
Retrieval of items and documents	70% (35 people)	38% (19 people)

7. When considering petitions of officials in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	…were produced in your practice
Appointment of a forensic examination	20% (10 people)	2% (1 person)
Interrogation of a witness	40% (20 people)	12% (6 people)
Interrogation of an expert	28% (14 people)	2% (1 person)
Interrogation of a specialist	36% (18 people)	4% (2 people)
Interrogation of a suspect/accused	34% (17 people)	8% (4 people)
Inspection of material evidence	30% (15 people)	2% (1 person)
Inspection of the area and premises	16% (8 people)	0%
Investigative experiment	12% (6 people)	0%
Presentation for identification	10% (5 people)	0%
Examination	10% (5 people)	0%
Retrieval of items and documents	58% (29 people)	20% (10 people)

8. In your opinion, can evidence obtained by the court during the exercise of judicial review be used as such in the “main” criminal case?

Yes, they can, by requesting copies from the materials of the judicial review proceedings by the investigator/inquiry officer	66% (33 people)
No, they cannot, since evidence can only be collected by the person conducting the criminal prosecution, and parallel collection of evidence by the investigator/inquiry officer and the court is not allowed. The official must independently conduct the investigative action carried out by the court	30% (15 people)
Other (indicate your answer)	4% (2 people): 1) "both the prosecution and the defense must have equal access to evidence"; 2) "if only for the sake of defense."

9. In your practice, has the court ever recognized an investigative action carried out in urgent cases as illegal (in accordance with Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation)?

Didn't recognize	66% (33 people)
Rarely acknowledged	30% (15 people)
Admitted often	4% (2 people)

Appendix 2

Results of the survey of prosecutors

In total, 132 prosecutors (from various regions of the Russian Federation) were surveyed between November and December 2023, 100 of whom indicated that they took part in court hearings held in the order of judicial review.

Accordingly, the percentage of responses was calculated from the number 100. Percentages were rounded to tenths.

Some of the respondents' answers in the "other (indicate your answer option)" column essentially coincided with the answer options proposed by the author of the questionnaire, and therefore the number of people who gave such answers was added to the total number of people who chose the corresponding proposed answer.

There were cases when respondents did not answer any of the questions in the questionnaire or put signs in several answer fields at once, when the question did not require this. Such a position of the respondent was assessed as an answer and was taken into account in the "other" column.

1. In your opinion, should the court, when exercising judicial review, evaluate the evidence presented by the parties in its decision?

Yes, I should.	63% (63 people)
No, it shouldn't.	34% (34 people)
Other (indicate your answer)	3% (3 people): 1) "the court must assess the validity of the motion"; 2) "depending on the subject of judicial review"; 3) "the stage is formal in nature."

2. In your practice, when implementing judicial review, do the parties file motions for investigative actions (interrogations, inspections, etc.)?

They don't declare	61% (61 people)
They say this often	12% (12 people)
They rarely declare	27% (27 people)

3. If the motions specified in the previous paragraph were filed, did the court grant such motions?[563]

Didn't satisfy	51.3% (20 people)
Satisfied often	10.3% (4 people)
Satisfied sometimes	38.4% (15 people)

4. In your opinion, is the court authorized to question witnesses when exercising judicial review?

Yes, I am authorized.	42% (42 people)
No, I am not authorized to do so, but I can receive explanations (clarifications) from them that are not presented in the procedural form of testimony.	56% (56 people)
Other (indicate your answer)	2% (2 people): 1) "the stage is of a formal nature"; 2) "there were no such facts."

5. When considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	…were produced in practice
Appointment of a forensic examination	4% (4 people)	0%
Interrogation of a witness	32% (32 people)	19% (19 people)
Interrogation of an expert	18% (18 people)	11% (11 people)
Interrogation of a specialist	16% (16 people)	9% (9 people)
Interrogation of a suspect/accused	13% (13 people)	9% (9 people)
Inspection of material evidence	14% (14 people)	5% (5 people)
Inspection of the area and premises	3% (3 people)	1% (1 person)
Investigative experiment	1% (1 person)	0%
Presentation for identification	2% (2 people)	0%
Examination	1% (1 person)	0%
Retrieval of items and documents	65% (65 people)	51% (51 people)

[563] The percentage of answers to this question is calculated from the number 39 (12 + 27 people).

6. When considering petitions from officials to select and extend the period of validity of preventive measures, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	…were produced in practice
Appointment of a forensic examination	2% (2 people)	0%
Interrogation of a witness	38% (38 people)	31% (31 people)
Interrogation of an expert	12% (12 people)	7% (7 people)
Interrogation of a specialist	12% (12 people)	8% (8 people)
Interrogation of a suspect/accused	26% (26 people)	20% (20 people)
Inspection of material evidence	7% (7 people)	2% (2 people)
Inspection of the area and premises	1% (1 person)	0%
Investigative experiment	1% (1 person)	0%
Presentation for identification	1% (1 person)	0%
Examination	1% (1 person)	0%
Retrieval of items and documents	58% (58 people)	43% (43 people)

7. When considering petitions of officials in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	…were produced in practice
Appointment of a forensic examination	1% (1 person)	1% (1 person)
Interrogation of a witness	18% (18 people)	10% (10 people)
Interrogation of an expert	12% (12 people)	2% (2 people)
Interrogation of a specialist	12% (12 people)	3% (3 people)
Interrogation of a suspect/accused	11% (11 people)	6% (6 people)
Inspection of material evidence	8% (8 people)	2% (2 people)
Inspection of the area and premises	1% (1 person)	0%
Investigative experiment	1% (1 person)	0%
Presentation for identification	1% (1 person)	0%
Examination	1% (1 person)	0%

Retrieval of items and documents	50% (50 people)	34% (34 people)

8. In your opinion, can evidence obtained by the court during the exercise of judicial review be used as such in the "main" criminal case?

Yes, they can, by requesting copies from the materials of the judicial review proceedings by the investigator/inquiry officer	49% (49 people)
No, they cannot, since evidence can only be collected by the person conducting the criminal prosecution, and parallel collection of evidence by the investigator/inquiry officer and the court is not allowed. The official must independently conduct the investigative action carried out by the court	47% (47 people)
Other (indicate your answer)	4% (4 people): 1) "the permitted formulation of the question – 'the court's receipt of evidence' – is perplexing and destroys the meaning of justice"; 2) "issues resolved in accordance with Articles 125, 108-109, 165 of the Criminal Procedure Code of the Russian Federation do not go beyond the scope of the submitted petitions and complaints"; 3) the above answers are not suitable; 4) no answer given.

9. In what form have court hearings been conducted in your practice to consider investigators' motions to permit investigative actions in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation?

Usually closed	58% (58 people)
Generally open	41% (41 people)
Other	1% (1 person):

	no answer given.

10. Have there been any cases in your practice where a court refused to grant permission to an official to carry out an investigative action in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation on the grounds that the submitted petition was unfounded?

No, there weren't any.	32% (32 people)
They were rare	65% (65 people)
There were often	2% (2 people)
Other	1% (1 person): no answer given.

Appendix 3

Results of the survey of investigators

In total, 58 investigators (from various regions of the Russian Federation) were surveyed between November 2023 and March 2024, 55 of whom indicated that they took part in court hearings held within the framework of certain types of judicial review.

Accordingly, the percentage of responses was calculated from the number 55. Percentages were rounded to tenths.

Some of the respondents' answers in the "other (indicate your answer option)" column essentially coincided with the answer options proposed by the author of the questionnaire, and therefore the number of people who gave such answers was added to the total number of people who chose the corresponding proposed answer.

There were cases when respondents did not answer any of the questions in the questionnaire. Such a position of the respondent was considered as an answer and was taken into account in the "other" column.

1. In your opinion, should the court, when exercising judicial review, evaluate the evidence presented by the parties in its decision?

Yes, I should.	34.6% (19 people)
No, it should not, since the court evaluates evidence only when considering the merits of a criminal case.	63.6% (35 people)
Other (indicate your answer)	1.8% (1 person): "I owe 125, but not the rest."

2. When exercising judicial review, do you file motions for investigative actions (interrogations, inspections, etc.)?

I do not declare	83.6% (46 people)
I say this often	1.8% (1 person)
I declare sometimes	14.6% (8 people)

3. If the motions specified in the previous paragraph were filed, did the court grant such motions?[564]

Didn't satisfy	0%
Satisfied often	66.7% (6 people)
Satisfied sometimes	33.3% (3 people)

4. In your opinion, is the court authorized to question witnesses when exercising judicial review?

Yes, I am authorized.	40% (22 people)
No, I am not authorized to do so, but I can receive explanations (clarifications) from them that are not presented in the procedural form of testimony.	52.7% (29 people)
Other (indicate your answer)	7.3% (4 people): the court is not at all authorized to question witnesses or receive explanations from them

5. When considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	…were produced in your practice
Appointment of a forensic examination	12.7% (7 people)	3.6% (2 people)
Interrogation of a witness	25.5% (14 people)	12.7% (7 people)
Interrogation of an expert	18.2% (10 people)	1.8% (1 person)
Interrogation of a specialist	18.2% (10 people)	3.6% (2 people)
Interrogation of a suspect/accused	20% (11 people)	9.1% (5 people)
Inspection of material evidence	9.1% (5 people)	1.8% (1 person)
Inspection of the area and premises	7.3% (4 people)	0%
Investigative experiment	7.3% (4 people)	0%
Presentation for identification	7.3% (4 people)	1.8% (1 person)
Examination	9.1% (5 people)	3.6% (2 people)
Retrieval of items and documents	60% (33 people)	41.8% (23 people)

[564] The percentage of answers to this question is calculated from the number 9 (1 + 8 people).

6. When considering petitions for the selection and extension of the period of validity of preventive measures, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	…were produced in your practice
Appointment of a forensic examination	5.5% (3 people)	3.6% (2 people)
Interrogation of a witness	32.7% (18 people)	23.6% (13 people)
Interrogation of an expert	14.6% (8 people)	3.6% (2 people)
Interrogation of a specialist	16.4% (9 people)	5.5% (3 people)
Interrogation of a suspect/accused	23.6% (13 people)	10.9% (6 people)
Inspection of material evidence	5.5% (3 people)	1.8% (1 person)
Inspection of the area and premises	5.5% (3 people)	0%
Investigative experiment	3.6% (2 people)	0%
Presentation for identification	3.6% (2 people)	0%
Examination	3.6% (2 people)	0%
Retrieval of items and documents	54.5% (30 people)	32.7% (18 people)

7. When considering petitions in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	…were produced in your practice
Appointment of a forensic examination	9.1% (5 people)	3.6% (2 people)
Interrogation of a witness	14.6% (8 people)	5.5% (3 people)
Interrogation of an expert	7.3% (4 people)	1.8% (1 person)
Interrogation of a specialist	7.3% (4 people)	1.8% (1 person)
Interrogation of a suspect/accused	7.3% (4 people)	0%
Inspection of material evidence	3.6% (2 people)	1.8% (1 person)
Inspection of the area and premises	5.5% (3 people)	1.8% (1 person)
Investigative experiment	5.5% (3 people)	0%
Presentation for identification	5.5% (3 people)	0%
Examination	3.6% (2 people)	0%
Retrieval of items and documents	47.3% (26 people)	25.5% (14 people)

8. In your opinion, can evidence obtained by the court during the exercise of judicial review be used as such in the “main” criminal case?

Yes, they can, by requesting copies from the materials of the judicial review proceedings by the investigator/inquiry officer	36.4% (20 people)
No, they cannot, since evidence can only be collected by the person conducting the criminal prosecution, and parallel collection of evidence by the investigator/inquiry officer and the court is not allowed. The official must independently conduct the investigative action carried out by the court	63.6% (35 people)
Other (indicate your answer)	0%

9. In what form have court hearings been conducted in your practice to consider petitions for permission to carry out investigative actions in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation?

Usually closed	74.5% (41 people)
Generally open	18.2% (10 people)
Other	7.3% (4 people)

10. Have there been any cases in your practice where the court refused to grant permission to carry out an investigative action in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation on the grounds that the submitted petition was unfounded?

No, there weren't any.	61.8% (34 people)
They were rare	34.6% (19 people)
There were often	0%
Other	3.6% (2 people): 1) No answer given; 2) No answer given.

Appendix 4

Results of the survey of judges

A total of 61 judges (from various regions of the Russian Federation) were surveyed between October 2023 and February 2024. Each of the respondents indicated that they had participated in court hearings held in the order of judicial review.

Accordingly, the percentage of responses was calculated from the number 61. Percentages were rounded to tenths.

Some of the respondents' answers in the "other (indicate your answer option)" column essentially coincided with the answer options proposed by the author of the questionnaire, and therefore the number of people who gave such answers was added to the total number of people who chose the corresponding proposed answer.

There were cases when respondents did not answer any of the questions in the questionnaire. Such a position of the respondent was considered as an answer and was taken into account in the "other" column.

1. Do you consider judicial review to be part of the court's activities in administering justice?

Yes	91.8% (56 people)
No, because justice consists only in considering criminal cases on their merits.	8.2% (5 people)
Other (indicate your answer)	0%

2. In your opinion, should the court, when exercising judicial review, evaluate the evidence presented by the parties in its decision?

Yes, I should.	31.1% (19 people)
No, it should not, since the court evaluates evidence only when considering the merits of a criminal case.	68.9% (42 people)
Other (indicate your answer)	0%

3. In your practice, when implementing judicial review, do the parties file motions for investigative actions (interrogations, inspections, etc.)?

They don't declare	39.3% (24 people)
They say this often	3.3% (2 people)

They sometimes say	57.4% (35 people)

4. If the requests specified in the previous paragraph were made, were they satisfied by you?[565]

Not satisfied	46% (17 people)
Were often satisfied	18.9% (7 people)
Were sometimes satisfied	35.1% (13 people)

5. In your opinion, is the court authorized to question witnesses when exercising judicial review?

Yes, I am authorized.	49.1% (30 people)
No, I am not authorized to do so, but I can receive explanations (clarifications) from them that are not presented in the procedural form of testimony.	45.9% (28 people)
Other (indicate your answer)	5% (3 people): 1) "not on the merits, but on procedural issues"; 2) no answer given; 3) no answer given.

6. When considering complaints in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	… were produced by you
Appointment of a forensic examination	6.6% (4 people)	0%
Interrogation of a witness	36.1% (22 people)	19.7% (12 people)
Interrogation of an expert	19.7% (12 people)	0%
Interrogation of a specialist	24.6% (15 people)	1.6% (1 person)
Interrogation of a suspect/accused	16.4% (10 people)	6.6% (4 people)
Inspection of material evidence	13.1% (8 people)	1.6% (1 person)
Inspection of the area and premises	9.8% (6 people)	0%
Investigative experiment	6.6% (4 people)	0%
Presentation for identification	6.6% (4 people)	0%
Examination	8.2% (5 people)	0%

[565] The percentage of answers to this question is calculated from the number 37 (2 + 35 people).

Retrieval of items and documents	73.8% (45 people)	47.5% (29 people)

7. When considering petitions from officials to select and extend the period of validity of preventive measures, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	… were produced by you
Appointment of a forensic examination	5% (3 people)	0%
Interrogation of a witness	62.3% (38 people)	37.7% (23 people)
Interrogation of an expert	14.8% (9 people)	1.6% (1 person)
Interrogation of a specialist	27.9% (17 people)	3.3% (2 people)
Interrogation of a suspect/accused	23% (14 people)	11.5% (7 people)
Inspection of material evidence	9.8% (6 people)	0%
Inspection of the area and premises	6.6% (4 people)	0%
Investigative experiment	5% (3 people)	0%
Presentation for identification	6.6% (4 people)	1.6% (1 person)
Examination	8.2% (5 people)	3.3% (2 people)
Retrieval of items and documents	65.6% (40 people)	29.5% (18 people)

8. When considering petitions of officials in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation, which of the listed investigative and other procedural actions...

	…it is permissible for the court to produce	… were produced by you
Appointment of a forensic examination	5% (3 people)	0%
Interrogation of a witness	27.9% (17 people)	16.4% (10 people)
Interrogation of an expert	9.8% (6 people)	0%
Interrogation of a specialist	21.3% (13 people)	1.6% (1 person)
Interrogation of a suspect/accused	11.5% (7 people)	5% (3 people)
Inspection of material evidence	13.1% (8 people)	0%
Inspection of the area and premises	8.2% (5 people)	0%
Investigative experiment	5% (3 people)	0%
Presentation for identification	3.3% (2 people)	0%

Examination	3.3% (2 people)	0%
Retrieval of items and documents	62.3% (38 people)	29.5% (18 people)

9. In your opinion, can evidence obtained by the court during the exercise of judicial review be used as such in the “main” criminal case?

Yes, they can, by requesting copies from the materials of the judicial review proceedings by the investigator/inquiry officer	37.7% (23 people)
No, they cannot, since evidence can only be collected by the person conducting the criminal prosecution, and parallel collection of evidence by the investigator/inquiry officer and the court is not allowed. The official must independently conduct the investigative action carried out by the court	52.5% (32 people)
Other (indicate your answer)	9.8% (6 people): 1) "may, provided that they contain evidence that cannot be obtained during a direct examination of the main case"; 2) no answer given; 3) no answer given; 4) answer given; 5) no answer given; 6) no answer given.

10. In what form do you conduct court hearings to consider motions of the investigator/inquiry officer to permit the performance of an investigative action in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation?

Usually closed	39.3% (24 people)
Generally open	60.7% (37 people)

11. Have there been any cases in your practice of refusing to grant permission to an official to carry out an investigative action in accordance with Article 165 of the Criminal Procedure Code of the Russian Federation on the grounds that the submitted petition was unfounded?

No, there weren't any.	9.8% (6 people)
They were rare	83.6% (51 people)
There were often	6.6% (4 people)

12. If a more lenient preventive measure is chosen for the suspect/accused than that requested by the official, in the operative part of the decision you indicate:

refusal to satisfy the official's petition and to choose a more lenient measure of restraint	93.4% (57 people)
partial satisfaction of the official's petition and the selection of a more lenient measure of restraint	6.6% (4 people)
Other (indicate your answer)	0%

13. In your opinion, do decisions taken by the court in the course of judicial review have a prejudicial effect on the court considering the case on the merits?

Yes, they do	18% (11 people)
No, they don't.	75.4% (46 people)
I find it difficult to answer	5% (3 people)
Other (indicate your answer)	1.6% (1 person): "yes, with the exception of issues that fall within the scope of the consideration of the case on the merits."

14. Do you believe that the procedure for implementing various judicial review proceedings should be unified in criminal procedure legislation?

Yes, I think so.	65.6% (40 people)
No, I don't think so.	31.1% (19 people)
Other (indicate your answer)	3.3% (2 people) 1) no answer given; 2) no answer given.

Appendix 5

Results of the generalization of practice under Article 108 of the Criminal Procedure Code of the Russian Federation

The published judicial decisions were selected by random and sequential sampling from the Official Portal of the Courts of General Jurisdiction of the City of Moscow (URL: https://mos-gorsud.ru).

Unpublished judicial acts and relevant materials from judicial review proceedings were selected using a sequential sampling method in the archives of district courts of St. Petersburg.

The judicial acts were studied for the period from 2021 to 2023. A total of 167 judicial decisions were analyzed. Of these, 100 were published judicial acts, 67 were unpublished.

Percentages were rounded to tenths.

The summary table is contained in Appendix No. 8.

	Number of materials
1. The decision taken	
the court granted the petition in full	87.4% (146)
The court granted the petition partially, choosing a more lenient measure of restraint	0% (0)
the court denied the petition	9.6% (16)
the court rejected the petition, choosing a more lenient measure of restraint	3% (5)
the court made a decision that was not on the merits of the petition filed	0%
2. An indication in the operative part of the court decision on the immediate release of the person from custody (if the choice of this preventive measure is refused)	Denied Detention - 21 Materials
the court ordered the immediate release of the person from custody	38.1% (8)
the court did not order the immediate release of the person from custody	61.9% (13)
3. The court's assessment of the validity of suspicion of a person's involvement in a crime committed (in the decision to select the requested or more lenient preventive measure)[566]	The preventive measure chosen is – 151 materials

[566] The percentage was calculated not from the total number of court decisions studied, but only from those that selected the measure of restraint requested by the official or a more lenient one, since the refusal to select a measure of restraint as such, as a rule, took place in cases where there were no grounds provided for in Article 97 of the Criminal Procedure Code of the Russian Federation (the presence of grounds to believe that the accused/suspect will abscond, may continue to engage in criminal activity, etc.), which are not related to the assessment of the validity of the suspicion of the person's involvement in the crime committed.

the court assessed the validity of the suspicion and disclosed the essence of all the evidence supporting it	0.7% (1)
the court assessed the validity of the suspicion by providing only a list of evidence supporting it or by disclosing the essence of only some of it	56.2% (85)
the court formally indicated the validity of the suspicion, confirmed by the materials presented	40.4% (61)
the court did not assess the validity of the suspicion	2.7% (4)
4. An indication in the court's decision that the court has assessed the evidence presented	
the court indicated that it had assessed the evidence presented and cited its content	0%
the court formally indicated that it had assessed the evidence presented	0%
the court did not indicate that it had assessed the evidence presented	100% (167)
5. Investigative actions carried out by the court	
the court carried out investigative actions: interrogation of witnesses at the request of the defense in order to characterize the personality of the suspect/accused	3% (5)
the court did not carry out investigative actions	97% (162)

Appendix 6

Results of the generalization of practice under Article 125 of the Criminal Procedure Code of the Russian Federation

The published judicial decisions were selected by random and sequential sampling from the Official Portal of the Courts of General Jurisdiction of the City of Moscow (URL: https://mos-gorsud.ru).

Unpublished judicial acts and relevant materials from judicial review proceedings were selected using a sequential sampling method in the archives of district courts of St. Petersburg.

The judicial acts were studied for the period from 2022 to 2024. A total of 167 judicial decisions were analyzed. Of these, 100 were published judicial acts, 67 were unpublished.

Percentages were rounded to tenths.

The summary table is contained in Appendix No. 9.

	Number of materials
1. Subject of appeal[567]	
resolution to initiate criminal proceedings	2.4% (4)
decision to refuse to initiate criminal proceedings	29.3% (49)
order to suspend preliminary investigation	0.6% (1)
decision to terminate a criminal case/criminal prosecution	1.8% (3)
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results[568]	19.2% (32)
failure of an official to consider a submitted petition	5.4% (9)
decision to deny the petition	4.2% (7)
failure of a party to familiarize itself with procedural documents[569]	6.6% (11)
non-referral of the case according to jurisdiction	0.6% (1)
use of unacceptable investigative methods	0%
failure to recognize a person as a victim	1.8% (3)

[567] In some cases, there were several subjects of appeal, and therefore each of them is taken into account in the total number of percentages. In some cases, the court refused to consider the complaint on the merits on several grounds. Also, within the framework of the proceedings on one complaint, the court considered it on the merits for a number of claims, and terminated the proceedings on other claims. There were also cases of the court considering a complaint after it was sent to jurisdiction from another court. Thus, the total number of subjects of appeal, decisions made and grounds for their adoption in percentage terms exceeds 100.

[568] This category also includes cases of non-acceptance, non-registration of a crime report, and failure to notify the applicant of the results of the investigation of the crime report.

[569] This category also includes cases where copies of procedural documents were not delivered to the applicant.

failure to consider (improper consideration) of an application for payment of a lawyer's services	4.8% (8)
actions of an official to seize items, documents / refusal to return them	3.6% (6)
order to declare a person wanted	1.2% (2)
improper conduct of a preliminary investigation, including failure to carry out necessary investigative and other procedural actions	3% (5)
investigative actions / decision of an official on their implementation	3.6% (6)
improper implementation of prosecutorial supervision and departmental control (outside the procedure provided for in Article 124 of the Criminal Procedure Code of the Russian Federation)	1.8% (3)
failure of the prosecutor and the head of the investigative body to consider a complaint filed in accordance with Article 124 of the Criminal Procedure Code of the Russian Federation	1.8% (3)
the prosecutor's decision to refuse to satisfy the complaint filed in accordance with Article 124 of the Criminal Procedure Code of the Russian Federation	0.6% (1)
failure of an official to terminate a criminal prosecution	1.8% (3)
other (qualification of the act; combining the investigation materials; failure of the investigator to allocate the materials of the criminal case on the fact of falsification of evidence; information letter; violation by the investigator of a reasonable time limit for legal proceedings; decision of the operative officer to impose restrictions on registration actions with the apartment; decision of the investigator to recognize the evidence as inadmissible; failure to bring the person to administrative responsibility; decision to apply a measure of procedural coercion to the applicant)	5.4% (9)
the subject of the appeal is not disclosed in the decision[570]	6.6% (11)
2. The decision taken	
the court granted the complaint in full	3.6% (6)
the court partially granted the complaint	1.8% (3)
the court rejected the complaint / left it unsatisfied	21% (35)
the court dismissed the proceedings on the complaint	22.8% (38)
the court refused to accept the complaint for consideration/proceedings	34.1% (57)
the court returned the complaint to the applicant	15.6% (26)

[570] This line indicates the number of published judicial acts only (which were not studied directly in the courts), since the failure to indicate the subject of the appeal in such acts was associated for the author of this study with the impossibility of determining it from the content of the complaints themselves. In this case, the percentage was calculated from the total number of judicial acts studied.

the court referred the complaint to the jurisdiction	3.6% (6)
3. The court's assessment in the decision taken on the merits of the complaint filed, of the legality/validity of the contested decisions and actions (inactions)	Considered on the merits – 44 materials
the court provided an assessment of the legality/validity of the contested decision or action (inaction)	93.2% (41)
the court did not provide an assessment of the legality/validity of the contested decision or action (inaction)	6.8% (3)
4. Grounds for making a decision not on the merits of the complaint filed	Decisions not on the merits were made – 127
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor	33.9% (43)
the criminal case has been sent to court for consideration on the merits	3.1% (4)
the complaint was withdrawn by the applicant	12.6% (16)
the complaint is not subject to the jurisdiction of this court	5.5% (7)
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration	12.6% (16)
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation	22.8% (29)
complaint filed by unauthorized person / not signed	4.7% (6)
a complaint with the same subject and grounds is pending before the court or a court decision has already been made on it	2.4% (3)
illegal inaction of an official was not allowed	1.6% (2)
a copy of the contested decision is not attached to the complaint / the applicant has not provided the results of the consideration of similar complaints filed with the head of the investigative body and the prosecutor	2.4% (3)
5. An indication in the decision taken on the merits of the complaint filed that the court has assessed the evidence presented	Considered on the merits – 44 materials
the court indicated that it had assessed the evidence presented and cited its content	0%
the court formally indicated that it had assessed the evidence presented	2.3% (1)
the court did not indicate that it had assessed the evidence presented	97.7% (43)
6. Investigative actions carried out by the court	

the court carried out investigative actions	0%
the court did not carry out investigative actions	100% (167)

Appendix 7

Results of the generalization of practice under Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation
(verification of the legality of an urgent search)

The published judicial acts were selected by random sampling from the Official Portal of the Courts of General Jurisdiction of the City of Moscow (URL: https://mos-gorsud.ru), as well as the Internet portal of the State Automated System "Justice" (URL: https://sudrf.ru).

Unpublished judicial acts and relevant materials from judicial review proceedings were selected using a sequential sampling method in the archives of district courts of St. Petersburg.

The judicial acts were studied for the period from 2021 to 2024. A total of 166 judicial decisions were analyzed. Of these, 100 were published judicial acts, 66 were unpublished.

Percentages were rounded to tenths.

The summary table is contained in Appendix No. 10.

	Number of materials
1. The decision taken	
the search conducted was found to be lawful	94.6% (157)
the search conducted was found to be illegal	4.8% (8)
refusal to accept the notice for consideration: absence of subject matter for consideration, since the premises in which the search was carried out do not have the characteristics of a home	0.6% (1)
2. Court's assessment of the existence of grounds for conducting a search[571]	Search found legal – 157 materials
The court assessed the necessity of conducting a search, citing specific evidence	1.3% (2)
the court assessed the necessity of conducting a search, indicating what it was based on, but did not refer to specific evidence	36.9% (58)
the court formally indicated the existence of grounds for conducting a search	36.3% (57)
the court did not assess the existence of grounds for conducting a search	25.5% (40)
3. The court's assessment of the urgent nature of the search	
the court assessed whether the search was urgent	40.1% (63)

[571] Here and in paragraphs 3 and 4 of this table, the percentage was calculated not from the total number of judicial decisions studied, but only from those in which the search was recognized as lawful, since, when recognizing a search as illegal on a certain basis, the courts, as a rule, did not check for the presence of other grounds for the legality of the search.

the court formally indicated that there were circumstances indicating the need for an immediate search	30.6% (48)
the court did not assess whether the search was urgent	29.3% (46)
4. The court's assessment of the legality of the investigative action itself (the protocol)	
The court assessed compliance with the norms of criminal procedure law during the search	42% (66)
the court formally indicated that the search was carried out in accordance with the requirements of the criminal procedure law	24.9% (39)
the court did not assess compliance with the norms of criminal procedure law during the search	33.1% (52)
5. An indication in the decision taken on the merits of the submitted notice that the court has assessed the evidence presented	Considered on the merits – 165 materials
the court indicated that it had assessed the evidence presented and cited its content	0%
the court formally indicated that it had assessed the evidence presented	0%
the court did not indicate that it had assessed the evidence presented	100% (165)
6. Participation of the defense in the court hearing	Considered on the merits – 165 materials
the defense participated	1.2% (2)
the defense did not participate	98.8% (163)
7. Investigative actions carried out by the court	
the court carried out investigative actions	0%
the court did not carry out investigative actions	100% (165)

Appendix 8

Generalization table of practice under Article 108 of the Criminal Procedure Code of the Russian Federation

Part 1

	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court/material number	Court / Material Number	Court/material number
	Lublin District Court of Moscow / 3/1-0052/2023	3/1-0051/2023	3/1-0048/2023	3/1-0046/2023	3/1-0045/2023	3/1-0033/2023	3/1-0031/2023	3/1-0027/2023	3/1-0025/2023	3/1-0024/2023
1. The decision taken										
the petition was granted in full	+	+	+	+	+	+	+	+	+	
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied										+
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										

not specified										+
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it[572]										
given with only a list of supporting evidence	+	+	+	+	+		+	+		
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials						+			+	
rating not given										+
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+

[572] Disclosure of the essence of evidence confirming the validity of suspicion in the table means disclosure of the essence of all evidence listed by the court, on the basis of which it comes to a conclusion about the validity of suspicion. If, however, in a list of several pieces of evidence, the court discloses the essence of only one of them (for example, indicates that "the victim during interrogation pointed to the accused as the person who committed the crime"), and only lists the remaining evidence, then this case is related to the column "providing only a list of evidence confirming the validity of suspicion".

6. Investigative actions carried out by the court										

Part 2

	Lublin District Court of Moscow / 3/1-0020/2023	3/1-0019/2023	3/1-0014/2023	3/1-0012/2023	3/1-0010/2023	3/1-0009/2023	3/1-0007/2023	3/1-0006/2023	3/1-0005/2023	3/1-0004/2023
1. The decision taken										
the petition was granted in full	+	+	+	+	+	+	+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied										
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified										
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										

given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence	+	+		+	+		+	+	+	+
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials			+							
rating not given						+				
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 3

	Lublin District Court of Moscow / 3/1-0003/2023	3/1-0002/2023	3/1-0001/2023	3/1-0194/2022	3/1-0193/2022	3/1-0192/2022	3/1-0191/2022	3/1-0190/2022	3/1-0189/2022	3/1-0188/2022
1. The decision taken										
the petition was granted in full	+	+	+	+	+		+	+	+	+

the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied										
the petition was denied with the choice of a more lenient preventive measure						+				
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified						+				
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence	+	+	+	+	+	+	+	+	+	+
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials										
rating not given										
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										

there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court						interrogation of a witness at the request of the defense				

Part 4

	Lublin District Court of Moscow / 3/1-0187/2022	3/1-0185/2022	3/1-0184/2022	3/1-0182/2022	3/1-0181/2022	3/1-0180/2022	Izmailovsky District Court of Moscow / 3/1-4/2023	3/1-0003/2023	3/1-0002/2023	3/1-0001/2023
1. The decision taken										
the petition was granted in full	+	+	+		+		+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied				+		+				
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										

the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified				+		+				
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence			+			+	+	+	+	
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials	+	+			+					+
rating not given				+						
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										

5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 5

	Izmailovsky District Court of Moscow / 3/1-0257/2022	3/1-0256/2022	3/1-0255/2022	3/1-0254/2022	3/1-0253/2022	3/1-0252/2022	3/1-0251/2022	3/1-0250/2022	3/1-0249/2022	3/1-0248/2022
1. The decision taken										
the petition was granted in full	+	+	+	+			+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied					+	+				
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										

the immediate release of the person from custody was indicated						+				
not specified					+					
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence	+	+	+				+			
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials				+				+	+	+
rating not given					+	+				
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 6

	Izmailovsky District Court of Moscow / 3/1-0247/2022	3/1-0246/2022	3/1-0245/2022	3/1-0242/2022	3/1-0241/2022	3/1-0240/2022	3/1-0237/2022	3/1-0236/2022	3/1-0235/2022	3/1-0234/2022
1. The decision taken										
the petition was granted in full	+	+	+	+		+		+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied					+		+			
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified					+		+			
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence			+			+		+	+	+

there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials	+	+		+						
rating not given					+		+			
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 7

	Izmailovsky District Court of Moscow / 3/1-0233/2022	3/1-0232/2022	3/1-0231/2022	3/1-0230/2022	3/1-0228/2022	3/1-0227/2022	3/1-0226/2022	3/1-0224/2022	3/1-0223/2022	3/1-0220/2022
1. The decision taken										
the petition was granted in full	+			+	+		+	+	+	
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied			+							+

the petition was denied with the choice of a more lenient preventive measure		+				+				
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated		+								
not specified			+			+				+
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence	+	+			+		+			
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials				+		+		+	+	
rating not given			+							+
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										

the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court		interrogation of a witness at the request of the defense								

Part 8

	Izmailovsky District Court of Moscow / 3/1-0219/2022	3/1-0218/2022	3/1-0217/2022	3/1-0215/2022	3/1-0214/2022	Butyrsky District Court Moscow city / 3/1-0033/2023	3/1-0029/2023	3/1-0028/2023	3/1-0027/2023	3/1-0026/2023
1. The decision taken										
the petition was granted in full	+	+	+		+		+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied				+						
the petition was denied with the choice of a more lenient preventive measure						+				
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										

the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated						+				
not specified				+						
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence	+	+	+		+		+	+	+	+
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials						+				
rating not given				+						
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										

formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court						interrogation of witnesses at the request of the defense				

Part 9

	Butyrsky District Court Moscow city / 3/1-0025/2023	3/1-0024/2023	3/1-0023/2023	3/1-0022/2023	3/1-0021/2023	Cheryomushkinsky District Court of Moscow / 3/1-0036/2023	3/1-0035/2023	3/1-0032/2023	3/1-0029/2023	3/1-0016/2023
1. The decision taken										
the petition was granted in full	+	+	+	+	+			+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied						+	+			
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated						+	+			

not specified										
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it				+						
given with only a list of supporting evidence	+	+	+		+			+	+	+
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials						+	+			
rating not given										
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 10

	Cheryomushkinsky District Court of Moscow / 3/1-0569/2022	3/1-0564/2022	Butyrsky District Court of Moscow / 3/1-0192/2022	3/1-0010/2023	3/1-0001/2023	3/1-0179/2022	3/1-0178/2022	Cheryomushkinsky District Court of Moscow / 3/1-0556/2022	3/1-0554/2022	3/1-0553/2022
1. The decision taken										
the petition was granted in full	+	+	+	+	+	+	+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied										
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified										
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence	+	+	+	+				+		+

there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials					+	+	+		+	
rating not given										
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 11

	Nevsky District Court of St. Petersburg / 3/1-456/2021	3/1-457/2021	3/1-458/2021	3/1-459/2021	3/1-460/2021	3/1-461/2021	3/1-462/2021	3/1-465/2021	3/1-466/2021	3/1-468/2021
1. The decision taken										
the petition was granted in full	+	+	+	+	+	+	+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied										

the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified										
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence				+	+	+	+	+	+	+
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials	+	+	+							
rating not given										
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										

the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court						The court denied the defense's motion to call individuals for questioning as witnesses				

Part 12

	Nevsky District Court of St. Petersburg / 3/1-469/2021	3/1-471/2021	3/1-472/2021	3/1-481/2021	3/1-482/2021	3/1-483/2021	3/1-486/2021	3/1-488/2021	3/1-489/2021	3/1-493/2021
1. The decision taken										
the petition was granted in full	+	+	+	+	+	+	+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied										
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										

petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified										
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence	+				+					+
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials		+	+	+		+	+	+	+	
rating not given										
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										

formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 13

	Nevsky District Court of St. Petersburg / 3/1-494/2021	3/1-495/2021	3/1-496/2021	Pushkinsky District Court of St. Petersburg / 3/1-157/23	3/1-155/23	3/1-154/23	3/1-153/23	3/1-152/23	3/1-143/23	3/1-141/23
1. The decision taken										
the petition was granted in full	+		+	+	+	+	+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied										
the petition was denied with the choice of a more lenient preventive measure		+								
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified		+								

3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence										
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials	+	+	+	+	+	+	+	+	+	+
rating not given										
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court	The court denied the defense's motion to question the person as a witness									

Part 14

	Pushkinsky District Court of St. Petersburg / 3/1-139/23	3/1-138/23	3/1-137/23	3/1-136/23	3/1-134/23	3/1-133/23	3/1-125/23	3/1-118/23	3/1-117/23	3/1-116/23
1. The decision taken										
the petition was granted in full	+	+	+	+	+	+	+		+	+
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied								+		
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated										
not specified								+		
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence									+	

there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials	+	+	+	+	+	+	+			+
rating not given								+		
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court		interrogation of a witness at the request of the defense								

Part 15

	Pushkinsky District Court of St. Petersburg / 3/1-113/23	3/1-112/23	3/1-111/23	3/1-109/23	3/1-108/23	3/1-107/23	3/1-106/23	3/1-105/23	3/1-103/23	3/1-102/23
1. The decision taken										
the petition was granted in full		+	+	+	+	+	+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen										

the petition was denied	+									
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										
the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated	+									
not specified										
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence				+	+	+	+	+		
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials		+	+						+	+
rating not given	+									
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										

there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										
5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court			interrogation of a witness at the request of the defense							

Part 16

	Pushkinsky District Court of St. Petersburg / 3/1-101/23	3/1-100/23	3/1-99/23	3/1-98/23	3/1-97/23	3/1-98/23	Frunzensky District Court of St. Petersburg / 3/1-172/23	3/1-170/23	3/1-167/23	3/1-166/23
1. The decision taken										
the petition was granted in full	+	+	+	+	+	+	+	+		
the petition was partially granted, a more lenient measure of restraint was chosen										
the petition was denied									+	+
the petition was denied with the choice of a more lenient preventive measure										
proceedings on the petition have been terminated										

the petition was refused acceptance for consideration/processing										
petition returned										
the petition was sent to the competent jurisdiction										
2. In case of refusal to detain a person in custody in the operative part of the court decision										
the immediate release of the person from custody was indicated									+	+
not specified										
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed										
given with disclosure of the essence of the evidence supporting it										
given with only a list of supporting evidence						+	+			
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials	+	+	+	+	+			+		
rating not given									+	+
4. Reasons for making a decision not on the merits										
the petition was withdrawn by the official										
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition										
the petition is not within the jurisdiction of this court										
other (specify what)										

5. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
6. Investigative actions carried out by the court										

Part 17

	Frunzensky District Court of St. Petersburg / 3/1-165/23	3/1-163/23	3/1-162/23	3/1-161/23	3/1-151/23	3/1-150/23	3/1-148/23
1. The decision taken							
the petition was granted in full	+	+	+	+	+	+	+
the petition was partially granted, a more lenient measure of restraint was chosen							
the petition was denied							
the petition was denied with the choice of a more lenient preventive measure							
proceedings on the petition have been terminated							
the petition was refused acceptance for consideration/processing							
petition returned							
the petition was sent to the competent jurisdiction							
2. In case of refusal to detain a person in custody in the operative part of the court decision							
the immediate release of the person from custody was indicated							

not specified							
3. In the decision taken on the merits, the assessment of the validity of the suspicion of the person's involvement in the crime committed							
given with disclosure of the essence of the evidence supporting it							
given with only a list of supporting evidence	+				+	+	+
there is only a formal reference to the validity/unvalidity of the suspicion, confirmed by the examined materials							
rating not given		+	+	+			
4. Reasons for making a decision not on the merits							
the petition was withdrawn by the official							
there is no consent from the relevant head of the investigative body or the prosecutor to initiate the petition							
the petition is not within the jurisdiction of this court							
other (specify what)							
5. The decision stated that the evidence presented							
an estimate is given and it is given							
formally it is indicated that the assessment has been made							
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+
6. Investigative actions carried out by the court							

Appendix 9

Generalization table of practice under Article 125 of the Criminal Procedure Code of the Russian Federation

Part 1

	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court/material number
	Lublin District Court of Moscow / 3/12-0052/2023	3/12-0051/2023	3/12-0047/23	3/12-0046/2023	3/12-0045/2023	3/12-0043/2023	3/12-0042/2023	3/12-0041/2023	3/12-0039/2023	3/12-0038/2023
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings	+	+			+				+	
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results						+	+			
failure of an official to consider a submitted petition										
decision to deny the petition										
failure of a party to familiarize itself with procedural documents										+
non-referral of the case according to jurisdiction			+							
use of unacceptable investigative methods										
failure to recognize a person as a victim										+

failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them										
other (specify what)										
the subject of the appeal is not disclosed in the decision				+				+		
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied						+	+			
the complaint proceedings have been terminated			+						+	
the complaint was refused acceptance for consideration/processing	+	+								
complaint returned					+			+		+
the complaint was sent to the competent jurisdiction				+						
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and decisions										
given						+	+			
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor	+	+							+	
the criminal case has been sent to court for consideration on the merits			+							
the complaint was withdrawn by the applicant										

the complaint is not subject to the jurisdiction of this court				+						
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration					+					+
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation										
complaint filed by unauthorized person / not signed								+		
other (specify what)										
5. In the solution, accepted on the merits, it is indicated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence						+	+			
6. Investigative actions carried out by the court										

Part 2

	Lublin District Court of Moscow / 3/12-35/2023	3/12-0033/2023	3/12-0031/2023	3/12-0030/2023	3/12-0029/2023	3/12-0028/2023	3/12-0027/2023	3/12-0025/2023	3/12-0024/2023	3/12-0023/2023
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings	+				+		+	+		

order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results			+						+	
failure of an official to consider a submitted petition										
decision to deny the petition										
failure of a party to familiarize itself with procedural documents										+
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services		+								
actions of an official to seize items, documents / refusal to return them										
other (specify what)										
the subject of the appeal is not disclosed in the decision				+		+				
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied			+						+	+
the complaint proceedings have been terminated										
the complaint was refused acceptance for consideration/processing	+			+	+	+	+	+		
complaint returned		+								

the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and decisions										
given			+						+	+
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor	+				+		+	+		
the criminal case has been sent to court for consideration on the merits				+		+				
the complaint was withdrawn by the applicant										
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration		+								
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation										
complaint filed by unauthorized person / not signed		+								
other (specify what)										
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										

formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence			+						+	+
6. Investigative actions carried out by the court										

Part 3

	Lublin District Court of Moscow / 3/12-0021/2023	3/12-0020/2023	3/12-0019/2023	3/12-0018/2023	3/12-0016/2023	3/12-0015/2023	3/12-0014/2023	3/12-0013/2023	3/12-0011/2023	3/12-0010/2023
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings	+	+	+	+	+		+			
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results										+
failure of an official to consider a submitted petition										
decision to deny the petition										
failure of a party to familiarize itself with procedural documents								+		
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										

failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them										
other (specify what)						qualification of the act			connection of verification materials	
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied			+							
the complaint proceedings have been terminated							+	+	+	+
the complaint was refused acceptance for consideration/processing	+			+	+	+				
complaint returned		+								
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given			+							
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor	+			+	+					

the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant							+	+	+	
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration										
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation						+				
complaint filed by unauthorized person / not signed		+								
other (specify what)										the same court is currently processing a complaint with the same subject matter
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence			+							
6. Investigative actions carried out by the court										

Part 4

	Lublin District Court of Moscow / 3/12-0009/2023	3/12-0007/2023	3/12-0006/2023	3/12-0005/2023	3/12-0004/2023	3/12-0003/2023	3/12-0002/2023	3/12-0001/2023	3/12-0200/2022	3/12-0199/2022
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings					+	+				
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										+
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results			+	+			+			
failure of an official to consider a submitted petition										
decision to deny the petition										
failure of a party to familiarize itself with procedural documents		+							+	
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim		+								
failure to consider (improper consideration) of an application for payment of a lawyer's services	+									
actions of an official to seize items, documents / refusal to return them								+		
other (specify what)										
the subject of the appeal is not disclosed in the decision										
2. The decision taken										

the complaint was upheld in full										
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied		+	+		+	+	+	+		
the complaint proceedings have been terminated	+									
the complaint was refused acceptance for consideration/processing										
complaint returned									+	+
the complaint was sent to the competent jurisdiction				+						
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given		+	+		+	+	+	+		
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor										
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant	+									
the complaint is not subject to the jurisdiction of this court				+						
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration									+	

absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation										
complaint filed by unauthorized person / not signed										+
other (specify what)										
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence		+	+		+	+	+	+		
6. Investigative actions carried out by the court										

Part 5

	Izmailovsky District Court of Moscow / 3/12-0026/23	3/12-0025/2023	3/12-0024/2023	3/12-0023/2023	3/12-0021/2023	3/12-0019/2023	3/12-0018/2023	3/12-0016/2023	3/12-0015/2023	3/12-0014/2023
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings			+	+				+		
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results	+									
failure of an official to consider a submitted petition										

decision to deny the petition										
failure of a party to familiarize itself with procedural documents	+									
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services						+	+			
actions of an official to seize items, documents / refusal to return them									+	
other (specify what)		information letter of the investigative department								
the subject of the appeal is not disclosed in the decision					+					+
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied										
the complaint proceedings have been terminated	+		+					+		
the complaint was refused acceptance for consideration/processing		+				+	+		+	+
complaint returned				+						
the complaint was sent to the competent jurisdiction					+					
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										

given										
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor			+					+		
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant						+	+			
the complaint is not subject to the jurisdiction of this court					+					+
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration									+	
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation	+	+								
complaint filed by unauthorized person / not signed										
other (specify what)				a copy of the contested decision is not attached to the complaint						
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										

the decision does not indicate that the court assessed the evidence										
6. Investigative actions carried out by the court										

Part 6

	Izmailovsky District Court of Moscow / 3/12-0013/2023	3/12-0011/2023	3/12-0008/2023	3/12-0003/2023	3/12-0001/2023	3/12-0232/2022	3/12-0231/2022	3/12-0230/2022	3/12-0229/2022	3/12-0228/2022
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings		+					+			+
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution			+							
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results					+			+		
failure of an official to consider a submitted petition										
decision to deny the petition									+	
failure of a party to familiarize itself with procedural documents										
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										

actions of an official to seize items, documents / refusal to return them										
other (specify what)	failure to terminate a criminal case after the expiration of the statute of limitations					decision to refuse to satisfy a complaint filed in accordance with Article 124 of the Criminal Procedure Code of the Russian Federation				
the subject of the appeal is not disclosed in the decision				+						
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied		+								
complaint denied / complaint left unsatisfied					+					
the complaint proceedings have been terminated	+		+					+		+
the complaint was refused acceptance for consideration/processing						+				
complaint returned				+			+		+	
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given		+			+					
not given										
4. Reasons for making a decision not on the merits										

the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor	+		+					+		+
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant										
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration				+			+			
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation						+				
complaint filed by unauthorized person / not signed										
other (specify what)									a copy of the contested decision is not attached to the complaint	
5. In the solution, accepted on the merits, it is indicated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence		+			+					
6. Investigative actions carried out by the court										

Part 7

	Izmailovsky District Court of Moscow / 3/12-0227/2022	3/12-0224/2022	3/12-0223/2022	3/12-0222/2022	3/12-0221/2022	3/12-0220/2022	3/12-0217/2022	3/12-0215/2022	3/12-0214/2022	3/12-0212/2022
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings					+		+			
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										+
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results	+									
failure of an official to consider a submitted petition			+							
decision to deny the petition								+		
failure of a party to familiarize itself with procedural documents										
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services						+			+	
actions of an official to seize items, documents / refusal to return them										
other (specify what)				failure to consider complaints filed in accordance						

				with Article 124 of the Criminal Procedure Code of the Russian Federation						
the subject of the appeal is not disclosed in the decision		+								
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied									+	+
the complaint proceedings have been terminated			+	+	+	+	+			
the complaint was refused acceptance for consideration/processing		+								
complaint returned	+							+		
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given									+	+
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor					+		+			
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant						+				

the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration	+									
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation		+	+	+				+		
complaint filed by unauthorized person / not signed										
other (specify what)										
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence									+	+
6. Investigative actions carried out by the court										

Part 8

	Izmailovsky District Court of Moscow / 3/12-0206/2022	3/12-0205/2022	3/12-0203/2022	3/12-0202/2022	3/12-0201/2022	Preobrazhensky District Court of Moscow/ 3/12-0029/2023	3/12-0028/2023	3/12-0026/2023	3/12-0025/2023	3/12-0024/2023
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings	+							+		
order to suspend preliminary investigation										

decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results			+	+	+		+		+	
failure of an official to consider a submitted petition						+				
decision to deny the petition		+								
failure of a party to familiarize itself with procedural documents										
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them										
other (specify what)									failure to notify the applicant of the results of the investigation of the crime report	order to declare a person wanted
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied						+	+		+ (in terms of arguments about the failure to	+

									carry out the necessary verification measures)	
the complaint proceedings have been terminated	+							+	+ (in terms of arguments regarding failure to notify the applicant)	
the complaint was refused acceptance for consideration/processing			+	+	+					
complaint returned		+								
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given						+	+		+	
not given										+
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor								+		
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant	+									
the complaint is not subject to the jurisdiction of this court										

it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration		+		+						
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation			+		+					
complaint filed by unauthorized person / not signed										
other (specify what)									no grounds for verification, since the applicant was notified	
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence						+	+		+	+
6. Investigative actions carried out by the court										

Part 9

	Preobrazhensky District Court of Moscow / 3/12-0023/23	3/12-0020/2023	3/12-0018/2023	3/12-0014/2023	3/12-0012/2023	3/12-0008/2023	3/12-0007/2023	3/12-0006/2023	3/12-0004/2023	3/12-0421/2022
1. Subject of appeal										
resolution to initiate criminal proceedings										

decision to refuse to initiate criminal proceedings					+					+
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results							+	+		
failure of an official to consider a submitted petition						+				
decision to deny the petition									+	
failure of a party to familiarize itself with procedural documents										
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services			+							
actions of an official to seize items, documents / refusal to return them										
other (specify what)	Violation of a reasonable time limit for legal proceedings due to repeated suspension of the investigation	failure to carry out necessary investigative actions in a criminal case								
the subject of the appeal is not disclosed in the decision				+						
2. The decision taken										
the complaint was upheld in full										

the complaint was partially satisfied										
complaint denied / complaint left unsatisfied	+	+			+	+	+	+	+ (in terms of arguments regarding the illegality of the decision to deny the petition)	
the complaint proceedings have been terminated			+						+ (in terms of arguments about the obligation of the investigator to return the material evidence)	+
the complaint was refused acceptance for consideration/processing										
complaint returned										
the complaint was sent to the competent jurisdiction				+						
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given	+	+				+	+	+	+	
not given					+					
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor										+

the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant			+						+ (in terms of arguments about the obligation of the investigator to return the material evidence)	
the complaint is not subject to the jurisdiction of this court				+						
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration										
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation										
complaint filed by unauthorized person / not signed										
other (specify what)										
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+			+	+	+	+	+	
6. Investigative actions carried out by the court										

Part 10

	Butyrsky District Court of Moscow / 3/12-0134/2022	3/12-0133/2022	3/12-0132/2022	3/12-0131/2022	3/12-0127/2022	3/12-0119/2022	3/12-0116/2022	3/12-0114/2022	3/12-0107/2022	3/12-0095/2022
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings		+			+			+		
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results				+						
failure of an official to consider a submitted petition			+							
decision to deny the petition										
failure of a party to familiarize itself with procedural documents						+				
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them	+									
other (specify what)							resolution on the appointment			

							of an expert examination			
the subject of the appeal is not disclosed in the decision									+	+
2. The decision taken										
the complaint was upheld in full			+							
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied	+									+
the complaint proceedings have been terminated		+		+	+			+		
the complaint was refused acceptance for consideration/processing										
complaint returned						+	+		+	
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given	+		+							
not given										+
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor		+			+			+		
the criminal case has been sent to court for consideration on the merits									+	
the complaint was withdrawn by the applicant				+						
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of						+	+			

the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration										
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation										
complaint filed by unauthorized person / not signed										
other (specify what)										
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made	+[573]									
the decision does not indicate that the court assessed the evidence			+							+
6. Investigative actions carried out by the court										

Part 11

	Nevsky District Court of St. Petersburg / 3/10-226/22	3/10-227/22[574]	3/10-228/22	3/10-229/22	3/10-230/22	3/10-231/22	3/10-232/22	3/10-233/22	3/10-236/22	3/10-237/22
1. Subject of appeal										
resolution to initiate criminal proceedings			+							
decision to refuse to initiate criminal proceedings										
order to suspend preliminary investigation										

[573] In its decision, the court stated: “having assessed all the evidence available in the case materials, the court comes to the conclusion that there are no grounds for satisfying the applicant’s complaint”.

[574] This column takes into account the content of the appellate ruling of the St. Petersburg City Court dated 06.04.23, which overturned the ruling of the Nevsky District Court dated 22.12.22 and terminated the proceedings on the complaint.

decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results										+
failure of an official to consider a submitted petition										
decision to deny the petition	+									
failure of a party to familiarize itself with procedural documents										
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them				+	+					
other (specify what)		decision of the operative officer to impose restrictions on registration actions with the apartment				failure to draw up a protocol on the seizure of the applicant's property after the court has made a decision to allow it	the investigator's decision to recognize the expert's conclusion as inadmissible evidence	inspection of objects	failure to carry out necessary investigative actions in a criminal case	
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										

complaint denied / complaint left unsatisfied					+					
the complaint proceedings have been terminated		+								
the complaint was refused acceptance for consideration/processing	+					+	+	+		
complaint returned			+	+					+	+
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and decisions										
given					+					
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor										
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant										
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration			+							+
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation	+	+		+		+	+	+	+	

complaint filed by unauthorized person / not signed										
other (specify what)										
5. In the solution, accepted on the merits, it is indicated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence					+					
6. Investigative actions carried out by the court										

Part 12

	Nevsky District Court of St. Petersburg / 3/10-238/22	3/10-239/22	3/10-240/22	3/10-242/22	3/10-243/22	3/10-244/22[575]	3/10-245/22	3/10-247/22	3/10-261/22	3/10-256/22
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings				+					+	
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results	+									+
failure of an official to consider a submitted petition										

[575] This column takes into account the content of the appellate ruling of the St. Petersburg City Court dated 14.03.23, by which the ruling of the Nevsky District Court dated 07.12.22 on leaving the complaint without satisfaction was overturned, and the applicant's complaint was satisfied in full.

decision to deny the petition					+					
failure of a party to familiarize itself with procedural documents										
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim						+				
failure to consider (improper consideration) of an application for payment of a lawyer's services		+								
actions of an official to seize items, documents / refusal to return them							+			
other (specify what)			"the performance by an investigator of an unspecified investigative action with the drawing up of a protocol of inspection of objects and documents"					failure of the investigator to allocate criminal materials on the fact of falsification of evidence		
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full						+				
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied										+
the complaint proceedings have been terminated	+				+				+	

the complaint was refused acceptance for consideration/processing			+	+				+		
complaint returned		+					+			
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and decisions										
given						+				+
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor	+			+					+	
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant					+					
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration		+								
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation			+					+		
complaint filed by unauthorized person / not signed										
other (specify what)							the applicant did not provide the			

							results of the consideration of similar complaints filed with the head of the investigative body and the prosecutor			
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence						+				+
6. Investigative actions carried out by the court						the court refused to satisfy the applicant's request to interrogate the person (it is not specified in what capacity)				

Part 13

	Nevsky District Court of St. Petersburg / 3/10-257/22	3/10-258/22	Pushkinsky District Court Saint Petersburg / 3/12-49/23	3/12-50/23	3/12-51/23	3/12-52/23	3/12-53/23	3/12-54/23	3/12-55/23	3/12-56/23
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings			+	+	+			+		+

order to suspend preliminary investigation									+	
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results		+								
failure of an official to consider a submitted petition						+				
decision to deny the petition	+									
failure of a party to familiarize itself with procedural documents							+			
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them										
other (specify what)	resolution on the appointment of an expert examination	improper implementation of prosecutorial supervision and departmental control over the investigation of a crime report				failure of the investigator to appoint an expert examination, the defense's motion for appointment of which was granted				
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full										

the complaint was partially satisfied										
complaint denied / complaint left unsatisfied	+									
the complaint proceedings have been terminated		+						+		
the complaint was refused acceptance for consideration/processing			+	+	+	+	+		+	+
complaint returned										
the complaint was sent to the competent jurisdiction								+ *		
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given	+									
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor			+	+	+			+	+	+
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant										
the complaint is not subject to the jurisdiction of this court								+ *		
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration										
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation		+				+	+			

complaint filed by unauthorized person / not signed										
other (specify what)										
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+									
6. Investigative actions carried out by the court										

Part 14

	Pushkinsky District Court St. Petersburg / 3/12-57/23	3/12-58/23	3/12-59/23	3/12-60/23	3/12-61/23	3/12-62/23	3/12-63/23	3/12-68/23	3/12-72/23	3/12-82/23
1. Subject of appeal										
resolution to initiate criminal proceedings		+								
decision to refuse to initiate criminal proceedings	+		+			+		+	+	
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results				+						+
failure of an official to consider a submitted petition										
decision to deny the petition										
failure of a party to familiarize itself with procedural documents										

non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them										
other (specify what)				failure of the prosecutor to consider a complaint against the actions of an official who conducted an investigation into a report of a crime	resolution on the conduct of an urgent search; actions of an official during its conduct		failure of the head of the investigative body to consider a complaint filed in accordance with Article 124 of the Criminal Procedure Code of the Russian Federation			
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full										
the complaint was partially satisfied										+
complaint denied / complaint left unsatisfied		+								
the complaint proceedings have been terminated										

the complaint was refused acceptance for consideration/processing			+	+			+	+	+	
complaint returned	+				+	+				
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given		+								+
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor			+	+				+	+	
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant										
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration					+					
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation							+			
complaint filed by unauthorized person / not signed	+					+				
other (specify what)										

5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence		+								+
6. Investigative actions carried out by the court										

Part 15

	Pushkinsky District Court St. Petersburg / 3/12-87/23	3/12-91/23	3/12-92/23	3/12-3/24	3/12-6/24	Frunzensky District Court of St. Petersburg / 3/10-109/23	3/10-104/23	3/10-101/23	3/10-96/23	3/10-94/23
1. Subject of appeal										
resolution to initiate criminal proceedings						+				
decision to refuse to initiate criminal proceedings		+						+		+
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results	+									
failure of an official to consider a submitted petition			+	+	+					
decision to deny the petition										
failure of a party to familiarize itself with procedural documents										
non-referral of the case according to jurisdiction										

use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them										
other (specify what)							failure of a police officer to hold a person administratively liable		improper conduct of preliminary investigation	
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full	+									
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied						+				
the complaint proceedings have been terminated								+	+	
the complaint was refused acceptance for consideration/processing		+	+	+	+		+			+
complaint returned										
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given	+					+				
not given										

4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor		+						+		+
the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant									+	
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration										
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation			+	+	+		+			
complaint filed by unauthorized person / not signed										
other (specify what)										
5. The decision taken on the merits stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+					+				
6. Investigative actions carried out by the court										

Part 16

	Frunzensky District Court of St. Petersburg / 3/10-93/23	3/10-92/23	3/10-91/23	3/10-90/23	3/10-89/23	3/10-88/23	3/10-87/23	3/10-86/23	3/10-85/23	3/10-82/23
1. Subject of appeal										
resolution to initiate criminal proceedings										
decision to refuse to initiate criminal proceedings	+			+	+				+	
order to suspend preliminary investigation										
decision to terminate a criminal case/criminal prosecution										
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results		+	+							+
failure of an official to consider a submitted petition										
decision to deny the petition										
failure of a party to familiarize itself with procedural documents						+				
non-referral of the case according to jurisdiction										
use of unacceptable investigative methods										
failure to recognize a person as a victim										
failure to consider (improper consideration) of an application for payment of a lawyer's services										
actions of an official to seize items, documents / refusal to return them										
other (specify what)							decision to apply a measure of procedural	order to declare a person wanted	improper implementation of	failure of the head of the inquiry body to exercise proper

							coercion to the applicant; actions of the investigator in interrogating the applicant as a suspect		prosecutorial supervision	control over the conduct of the pre-investigation check
the subject of the appeal is not disclosed in the decision										
2. The decision taken										
the complaint was upheld in full								+		+
the complaint was partially satisfied										
complaint denied / complaint left unsatisfied										
the complaint proceedings have been terminated										
the complaint was refused acceptance for consideration/processing	+	+	+	+	+	+	+		+	
complaint returned										
the complaint was sent to the competent jurisdiction										
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions										
given								+		+
not given										
4. Reasons for making a decision not on the merits										
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor	+			+	+				+	

the criminal case has been sent to court for consideration on the merits										
the complaint was withdrawn by the applicant						+				
the complaint is not subject to the jurisdiction of this court										
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration										
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation			+				+			
complaint filed by unauthorized person / not signed										
other (specify what)		a court decision has already been made on a complaint with the same subject and grounds					a court decision has already been made on a complaint with the same subject and grounds			
5. In the solution, accepted on the merits, it is indicated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence								+		+
6. Investigative actions carried out by the court										

Part 17

	Frunzensky District Court of St. Petersburg / 3/10-81/23	3/10-77/23	3/10-74/23	3/10-73/23	3/10-67/23	3/10-64/23	3/10-60/23
1. Subject of appeal							
resolution to initiate criminal proceedings		+					
decision to refuse to initiate criminal proceedings							
order to suspend preliminary investigation							
decision to terminate a criminal case/criminal prosecution							
failure to conduct (improper conduct) of an investigation into a crime report / failure to make a decision based on its results					+		
failure of an official to consider a submitted petition			+ (considered in the form of a response to an appeal)				
decision to deny the petition							
failure of a party to familiarize itself with procedural documents	+			+			
non-referral of the case according to jurisdiction							
use of unacceptable investigative methods							
failure to recognize a person as a victim							
failure to consider (improper consideration) of an application for payment of a lawyer's services							
actions of an official to seize items, documents / refusal to return them							
other (specify what)			the investigator's refusal to resume the			inaction of an investigator to terminate the criminal	inaction of an investigator upon

			preliminary investigation and failure to terminate the criminal case			prosecution of a person after failure to present charges within 10 days from the date of selection of a preventive measure	receiving a report of a crime from a participant in an investigative action
the subject of the appeal is not disclosed in the decision							
2. The decision taken							
the complaint was upheld in full		+					
the complaint was partially satisfied			+				
complaint denied / complaint left unsatisfied					+	+	
the complaint proceedings have been terminated				+			
the complaint was refused acceptance for consideration/processing	+						+
complaint returned							
the complaint was sent to the competent jurisdiction			+				
3. In the decision taken on the merits, an assessment of the legality/validity of the contested actions (inactions) and solutions							
given		+	+		+	+	
not given							
4. Reasons for making a decision not on the merits							
the violation has been eliminated by the investigator, inquiry officer, head of the investigative body or prosecutor							
the criminal case has been sent to court for consideration on the merits							
the complaint was withdrawn by the applicant	+			+			

the complaint is not subject to the jurisdiction of this court			+				
it is impossible to establish from the content of the complaint the existence of the subject of the appeal provided for by law / the complaint does not contain the necessary information, which prevents its consideration							
absence of a subject of appeal in accordance with Article 125 of the Criminal Procedure Code of the Russian Federation							
complaint filed by unauthorized person / not signed							
other (specify what)							illegal inaction not allowed
5. The decision taken on the merits stated that the evidence presented							
an estimate is given and it is given							
formally it is indicated that the assessment has been made							
the decision does not indicate that the court assessed the evidence		+	+		+	+	
6. Investigative actions carried out by the court							

Appendix 10

Generalization table of practice under Part 5 of Article 165 of the Criminal Procedure Code of the Russian Federation (verification of the legality of an urgent search)

Part 1

	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court / Material Number	Court/material number
	Lublin District Court of Moscow / 3/6-0021/2023	3/6-0020/2023	3/6-0019/2023	3/6-0018/2023	3/6-0017/2023	3/6-0016/2023	3/6-0015/2023	3/6-0013/2023	3/6-0012/2023	3/6-0011/2023
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence	+		+	+	+	+	+	+	+	+

there is a formal reference to the presence/absence of grounds for carrying out investigative actions										
not rated		+								
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated										
formally indicated that the investigative action could not be delayed	+		+					+	+	+
not rated		+		+	+	+	+			
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains				+	+	+	+			
there is a formal reference to the legality/illegality of the investigative action carried out			+					+	+	+
not contained	+	+								
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+

7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 2

	Lublin District Court of Moscow / 3/6-0010/2023	3/6-0009/2023	3/6-0008/2023	3/6-0004/2023	3/6-0002/2023	3/6-0001/2023	3/6-0137/2022	3/6-0136/2022	3/6-0135/2022	3/6-0134/2022
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence				+	+		+	+		
there is a formal reference to the presence/absence of grounds for carrying out investigative actions	+	+	+			+				
not rated									+	+

3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated										
formally indicated that the investigative action could not be delayed	+	+	+	+	+	+	+	+		
not rated									+	+
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains										
there is a formal reference to the legality/illegality of the investigative action carried out	+	+	+	+		+				
not contained					+		+	+	+	+
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+

8. Investigative actions carried out by the court										

Part 3

	Lublin District Court of Moscow / 3/6-0133/2022	3/6-0132/2022	3/6-0130/2022	3/6-0128/2022	3/6-0118/2022	3/6-0115/2022	3/6-0114/2022	3/6-0113/2022	3/6-0112/2022	3/6-0111/2022
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence	+	+		+				+	+	
there is a formal reference to the presence/absence of grounds for carrying out investigative actions					+	+	+			+
not rated			+							
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated										
formally indicated that the investigative action could not be delayed		+		+	+	+	+	+	+	+

not rated	+		+							
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains	+									
there is a formal reference to the legality/illegality of the investigative action carried out		+			+	+	+			+
not contained			+	+				+	+	
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 4

	Lublin District Court of Moscow / 3/6-0110/2022	3/6-0109/2022	3/6-0107/2022	3/6-0106/2022	3/6-0105/2022	3/6-0104/2022	Butyrsky District Court of Moscow / 3/6-055/2023	3/6-0342/2022	Zheleznodorozhny City Court of Moscow Region / 3/3-31/22	3/3-30/22
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence			+				+	+		
there is a formal reference to the presence/absence of grounds for carrying out investigative actions	+	+		+	+	+			+	+
not rated										
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated										
formally indicated that the investigative action could not be delayed	+	+	+	+	+	+		+		
not rated							+		+	+
4. In the decision taken on the merits, the assessment of the legality of the										

investigative action itself (the protocol)										
contains										
there is a formal reference to the legality/illegality of the investigative action carried out	+	+	+	+	+	+	+			
not contained								+	+	+
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 5

	Kansk City Court of Krasnoyarsk Krai / 3/3-50/22	3/3-51/22	Zheleznodorozhny City Court of Moscow Region / 3/3-1/22	3/3-4/2022	3/3-17/2022	3/3-16/2022	3/3-15/2022	Bataysk City Court of Rostov Region / 3/3-47/2022	Megion City Court of the Khanty-Mansiysk Autonomous Okrug / 3/6-10/2022	3/6-2/2022
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence	+	+								
there is a formal reference to the presence/absence of grounds for carrying out investigative actions			+	+				+		
not rated					+	+	+		+	+
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated	+	+								
formally indicated that the investigative action could not be delayed								+		

not rated			+	+	+	+	+		+	+
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains									+	+
there is a formal reference to the legality/illegality of the investigative action carried out										
not contained	+	+	+	+	+	+	+	+		
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 6

	Megion City Court of the Khanty-Mansiysk Autonomous Okrug / 3/6-11/2022	Soviet District Court of the Astrakhan Region / 3/3-58/2022	3/3-28/2022	Narimanov District Court of the Astrakhan Region / 3/6-11/2022	Trusovsky District Court of Astrakhan / 3/3-40/2022	Kuvandyk District Court of the Orenburg Region / 3/3-7/2022	Nogai District Court of the Republic of Dagestan / 3/12-6/2022	3/12-2-5/22	Untsukulsky District Court of the Republic of Dagestan / 3/3-4/2021	Megion City Court of the Khanty-Mansiysk Autonomous Okrug/ 3/6-13/2021
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+		+
declared illegal									+	
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence		+	+	+			+	+	+	
there is a formal reference to the presence/absence of grounds for carrying out investigative actions										
not rated	+				+	+				+
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated		+	+	+	+		+	+	+	
formally indicated that the investigative action could not be delayed										

not rated	+					+				+
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains	+			+	+					+
there is a formal reference to the legality/illegality of the investigative action carried out										
not contained		+	+			+	+	+	+	
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 7

	Megion City Court of the Khanty-Mansiysk Autonomous Okrug / 3/6-38/2021	3/6-43/2021	3/6-37/2021	3/6-39/2021	3/6-3/2021	3/6-65/2021	3/6-12/2021	Belevsky District Court of the Tula Region / 3/6-2/2021	Untsukulsky District Court of the Republic of Dagestan / 3/3-17/2021	3/3-19/2021
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+		
declared illegal									+	+
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented									+	+
assessed with an indication of what it was conditioned on, without reference to evidence								+		
there is a formal reference to the presence/absence of grounds for carrying out investigative actions										
not rated	+	+	+	+	+	+	+			
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated									+	+
formally indicated that the investigative action could not be delayed										

not rated	+	+	+	+	+	+	+	+		
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains	+	+	+	+	+	+	+			+
there is a formal reference to the legality/illegality of the investigative action carried out										
not contained								+	+	
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 8

	Untsukulsky District Court of the Republic of Dagestan / 3/3-18/2021	Trusovsky District Court of Astrakhan/ 3/3-42/2021	3/3-41/2021	Megion City Court of the Khanty-Mansiysk Autonomous Okrug / 3/6-20/2021	Sarapulsky District Court of the Udmurt Republic / 3/3-11/2021	3/3-16/2021	Trusovsky District Court of Astrakhan/ 3/3-59/2021	3/3-39/2021	Sarapulsky District Court of the Republic of Udmurtia / 3/3-15/2021	Megion City Court of the Khanty-Mansiysk Autonomous Okrug/ 3/6-64/2021
1. Investigative action carried out										
recognized as legal		+	+	+	+	+	+	+	+	+
declared illegal	+									
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented	+									
assessed with an indication of what it was conditioned on, without reference to evidence										
there is a formal reference to the presence/absence of grounds for carrying out investigative actions		+	+		+			+	+	
not rated				+		+	+			+
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated	+				+	+	+		+	
formally indicated that the investigative action could not be delayed		+	+					+		

not rated				+						+
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains				+			+			+
there is a formal reference to the legality/illegality of the investigative action carried out		+	+					+		
not contained	+				+	+			+	
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 9

	Trusovsky District Court of Astrakhan / 3/3-40/2021	Aleksandrovsky District Court of Stavropol Krai / 3/3-15/2020	3/3-40/2020	Kansk City Court of Krasnoyarsk Krai / 3/3-17/2020	3/3-76/2020	Elizovsky District Court of Kamchatka Krai / 3/3-2/2020	Kansk City Court of Krasnoyarsk Krai / 3/3-22/2020	3/3-80/2020	3/3-25/2020	Aleksandrovsky District Court of Stavropol Krai / 3/3-39/2020
1. Investigative action carried out										
recognized as legal	+	+	+	+		+	+	+	+	+
declared illegal					+					
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented					+	+				
assessed with an indication of what it was conditioned on, without reference to evidence			+							+
there is a formal reference to the presence/absence of grounds for carrying out investigative actions				+						
not rated	+	+					+	+	+	
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated		+	+		+	+				+
formally indicated that the investigative action could not be delayed	+			+			+	+	+	
not rated										

4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains										
there is a formal reference to the legality/illegality of the investigative action carried out	+	+	+							+
not contained				+	+	+	+	+	+	
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 10

	Aleksandrovsky District Court of Stavropol Krai / 3/3-3/2020	3/3-10/2020	Sarapulsky District Court of the Udmurt Republic / 3/3-28/2020	Aleksandrovsky District Court of Stavropol Krai / 3/3-18/2020	Kansk City Court of Krasnoyarsk Krai / 3/3-78/2020	3/3-26/2020	3/3-81/2020	Butyrsky District Court of Moscow / 3/6-0313/2022	3/6-0311/2022	3/6-0309/2022
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented					+					
assessed with an indication of what it was conditioned on, without reference to evidence				+						
there is a formal reference to the presence/absence of grounds for carrying out investigative actions			+				+	+	+	+
not rated	+	+				+				
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated	+	+	+	+						
formally indicated that the investigative action could not be delayed					+	+	+			

not rated								+	+	+
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains								+	+	+
there is a formal reference to the legality/illegality of the investigative action carried out	+	+		+						
not contained			+		+	+	+			
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 11

	Nevsky District Court of St. Petersburg / 3/3-308/21	3/3-312/21	3/3-341/21	3/3-343/21	3/3-344/21	3/3-345/21	3/3-347/2021	3/3-366/21	3/3-371/21	3/3-377/21
1. Investigative action carried out										
recognized as legal	+		+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing		+								
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence								+		+
there is a formal reference to the presence/absence of grounds for carrying out investigative actions			+							
not rated	+			+	+	+	+		+	
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated										
formally indicated that the investigative action could not be delayed			+					+		
not rated	+			+	+	+	+		+	+
4. In the decision taken on the merits, the assessment of the legality of the										

investigative action itself (the protocol)										
contains					+	+	+			+
there is a formal reference to the legality/illegality of the investigative action carried out										
not contained	+		+	+				+	+	
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)		"absence of a subject of consideration of the notice of a search" since the premises in which the search was carried out do not have the characteristics of a home								
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+		+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+		+	+	+	+	+	+	+	+

8. Investigative actions carried out by the court										

Part 12

	Nevsky District Court of St. Petersburg / 3/3-378/21	3/3-379/21	3/3-387/21	3/3-388/21[576]	3/3-389/21	3/3-390/21	3/3-393/21	3/6-474/21	3/6-441/21	3/3-395/21
1. Investigative action carried out										
recognized as legal	+	+	+		+	+	+	+	+	+
declared illegal				+						
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence	+	+	+		+	+	+	+		+
there is a formal reference to the presence/absence of grounds for carrying out investigative actions										
not rated				+					+	
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated			+	+	+	+				

[576] This column takes into account the content of the appellate ruling of the St. Petersburg City Court dated 10.03.22, which overturned the ruling of the Nevsky District Court dated 13.12.21 on recognizing the search as legal, and adopted a new decision recognizing the search as illegal.

formally indicated that the investigative action could not be delayed							+	+		+
not rated	+	+							+	
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains	+	+								
there is a formal reference to the legality/illegality of the investigative action carried out			+		+	+		+		
not contained				+			+		+	+
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated				+ (in both instances)						
did not participate	+	+	+		+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 13

	Nevsky District Court of St. Petersburg / 3/3-414/21	3/3-415/21	Pushkinsky District Court of St. Petersburg / 3/6-2/24	3/6-3/24	3/6-28/24	3/6-228/23	3/6-226/23	3/6-221/23	3/6-220/23	3/6-215/23
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence		+				+				
there is a formal reference to the presence/absence of grounds for carrying out investigative actions			+	+	+		+	+	+	+
not rated	+									
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated			+	+	+	+	+	+	+	+
formally indicated that the investigative action could not be delayed		+								
not rated	+									

4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains			+	+	+	+	+	+	+	+
there is a formal reference to the legality/illegality of the investigative action carried out										
not contained	+	+								
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 14

	Pushkinsky District Court of St. Petersburg / 3/6-214/23	3/6-209/23	3/6-207/23	3/6-206/23	3/6-201/23	3/6-200/23	3/6-194/23	3/6-193/23	3/6-192/23	3/6-191/23
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence					+	+			+	
there is a formal reference to the presence/absence of grounds for carrying out investigative actions	+	+	+	+			+	+		+
not rated										
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated	+	+	+	+	+	+	+	+	+	+
formally indicated that the investigative action could not be delayed										
not rated										
4. In the decision taken on the merits, the assessment of the legality of the										

investigative action itself (the protocol)										
contains	+	+	+	+	+	+	+	+	+	+
there is a formal reference to the legality/illegality of the investigative action carried out										
not contained										
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated									+ (she was not present at the hearing, but submitted her written position to the court)	
did not participate	+	+	+	+	+	+	+	+		+
8. Investigative actions carried out by the court										

Part 15

	Pushkinsky District Court of St. Petersburg / 3/6-190/23	3/6-189/23	3/6-188/23	3/6-187/23	3/6-186/23	3/6-184/23	3/6-183/23	3/6-182/23	3/6-178/23	3/6-177/23
1. Investigative action carried out										
recognized as legal	+	+	+	+	+	+	+	+	+	+
declared illegal										
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence								+	+	
there is a formal reference to the presence/absence of grounds for carrying out investigative actions	+	+	+	+	+	+	+			+
not rated										
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated	+	+	+	+	+	+	+	+	+	+
formally indicated that the investigative action could not be delayed										
not rated										
4. In the decision taken on the merits, the assessment of the legality of the										

investigative action itself (the protocol)										
contains	+	+	+	+	+	+	+	+	+	+
there is a formal reference to the legality/illegality of the investigative action carried out										
not contained										
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 16

	Pushkinsky District Court of St. Petersburg / 3/6-167/23	3/6-166/23	3/6-165/23	3/6-164/23	3/6-163/23	Frunzensky District Court of St. Petersburg / 3/3-133/23	3/3-132/23	3/3-131/23	3/3-104/23	3/3-100/23
1. Investigative action carried out										

recognized as legal	+	+	+	+	+	+	+			+
declared illegal								+	+	
production has been discontinued										
the notification was refused acceptance for consideration/processing										
notification returned										
notification sent to the appropriate jurisdiction										
2. In the decision taken on the merits, the need to conduct an investigative action										
assessed with reference to the specific evidence presented										
assessed with an indication of what it was conditioned on, without reference to evidence						+	+			+
there is a formal reference to the presence/absence of grounds for carrying out investigative actions	+	+	+	+	+					
not rated								+	+	
3. In the decision taken on the merits, the urgent nature of the investigative action										
appreciated	+	+	+	+	+					+
formally indicated that the investigative action could not be delayed						+	+			
not rated								+	+	
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)										
contains	+	+	+	+	+					
there is a formal reference to the legality/illegality of the investigative action carried out										+

not contained						+	+	+	+	
5. Reasons for making a decision not on the merits										
the required documents were not attached to the notification										
other (specify what)										
6. The decision stated that the evidence presented										
an estimate is given and it is given										
formally it is indicated that the assessment has been made										
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+	+	+	+	+
7. The defense side at the court hearing										
participated										
did not participate	+	+	+	+	+	+	+	+	+	+
8. Investigative actions carried out by the court										

Part 17

	Frunzensky District Court of St. Petersburg / 3/3-91/23	3/3-90/23	3/3-89/23	3/3-84/23	3/3-83/23	3/3-82/23
1. Investigative action carried out						
recognized as legal	+	+	+	+	+	+
declared illegal						
production has been discontinued						
the notification was refused acceptance for consideration/processing						
notification returned						
notification sent to the appropriate jurisdiction						

2. In the decision taken on the merits, the need to conduct an investigative action						
assessed with reference to the specific evidence presented						
assessed with an indication of what it was conditioned on, without reference to evidence	+	+	+	+	+	+
there is a formal reference to the presence/absence of grounds for carrying out investigative actions						
not rated						
3. In the decision taken on the merits, the urgent nature of the investigative action						
appreciated	+	+	+	+	+	+
formally indicated that the investigative action could not be delayed						
not rated						
4. In the decision taken on the merits, the assessment of the legality of the investigative action itself (the protocol)						
contains				+	+	+
there is a formal reference to the legality/illegality of the investigative action carried out	+	+	+			
not contained						
5. Reasons for making a decision not on the merits						
the required documents were not attached to the notification						
other (specify what)						

6. The decision stated that the evidence presented						
an estimate is given and it is given						
formally it is indicated that the assessment has been made						
the decision does not indicate that the court assessed the evidence	+	+	+	+	+	+
7. The defense side at the court hearing						
participated						
did not participate	+	+	+	+	+	+
8. Investigative actions carried out by the court						