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**COMPENSATION FOR DAMAGE CAUSED BY A CRIME IN PRE-TRIAL PROCEEDINGS  
IN CRIMINAL CASES: ISSUES OF THEORY AND PRACTICE**

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**Abstract**

Authors pay close attention to the problems of compensation for damage caused by a crime in pre-trial proceedings in criminal cases. The relevance of the subject, as stressed by the authors, is the presence of these problems in Russian legal doctrine, which requires rethinking of approaches, used when creating uniform models for this activity regulation and also the need for a unified approach to the implementation of activities on compensation of harm caused by the crime, from the practical organs. Taking into account the array of all the circumstances, the authors determined the direction of the study and formulated its main problem – is the pre-trial procedure for compensation for damage caused by a crime, integrated into the procedural activities of investigators, interrogators, a set of regulations that can effectively regulate the issues of ensuring compensation for damage caused by a crime? The purpose of this study is to justify and develop provisions that determine theoretical and legal basis for pre-trial compensation for harm caused as a result of criminal acts, an effective mechanism that regulates activities of officials conducting preliminary investigations to compensate for harm caused, as well as proposals for making conceptual changes and additions to the criminal procedure law.



### Keywords

Harm Caused by a Crime – Pre-Trial Proceedings – Inquirer – Arrest on Property – Civil Claim

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## Introduction

Any crime, being an illegal act, socially dangerous, always leads to negative consequences, including causing certain harm. Issues related to compensation of the harm caused by the crime in their domestic legal doctrine – a significant and undeniable fact, requiring approaches to be redefined, in order to create a single mechanism of this activity regulation at state level in general and by preliminary investigations in particular.

Concerning the degree of development of the chosen topic at the level of dissertation research for the degree of doctor of law, it should be emphasized that the issues of pre-trial compensation for damage caused by a crime were considered, but only in certain aspects. In particular, dissertations by B. T. Bezlepkin<sup>1</sup>, V.S. Shadrin<sup>2</sup>, Z.L. Shkhagapsoev<sup>3</sup>, O.V. Volynskaya<sup>4</sup>, E.N. Kleschina<sup>5</sup>, O.V. Gladysheva<sup>6</sup>, V.Yu. Melnikov<sup>7</sup>, S.A. Sinenko<sup>8</sup>, N.E. Martynenko<sup>9</sup>, D.A. Ivanov<sup>10</sup> and others should be included. The study of legal literature allows us to conclude that the vast majority of works shows a low level of effectiveness compensation provision for damage caused by a crime in pre-trial proceedings in criminal cases.

## Materials and Methods

In order to fully and accurately uncover the subject of research, special legal methods were used: historical-legal, comparative-legal, formal-legal, analysis, synthesis, system, sociological (questionnaire, discussion, interviewing), etc.

The historical and legal method allowed us to consider the evolution of the institution of compensation for damage caused by a crime, as well as to form the element composition of this legal institution, taking into account the modern needs of science and practice.

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<sup>1</sup> B. T. Bezlepkin, *Vozmescheniye vreda prichinennogo grazhdaninu v ugovnom sudoproizvodstve: teoreticheskiye osnovy pravovogo instituta*: Doctoral dissertation (Moscow, 1981).

<sup>2</sup> V. S. Shadrin, *Obespecheniye prav lichnosti pri rassledovanii prestupleniy*: Doctoral dissertation (Moscow, 1997).

<sup>3</sup> Z. L. Shkhagapsoev, *Mekhanizm pravovogo regulirovaniya okhranitelnykh otnosheniy v ugovnom sudoproizvodstve*: Doctoral dissertation (Saint-Petersburg, 2006).

<sup>4</sup> O. V. Volynskaya, *Prekrascheniye ugovnogo dela i ugovnogo presledovaniya: teoreticheskiye i organizatsionno-pravovye problem*: Doctoral dissertation (Moscow, 2008).

<sup>5</sup> E. N. Kleschina, *Kriminologicheskoe ucheniye o zhertve prestupleniya i problemy ego realizatsii v zakonodatelstve i deyatelnosti organov vnutrennykh del*: Doctoral dissertation (Moscow, 2010).

<sup>6</sup> O. V. Gladysheva, *Teoreticheskaya model mekhanizmov obespecheniya prav i zakonnykh interesov cheloveka i grazhdanina v ugovnom sudoproizvodstve*: Doctoral dissertation (Moscow, 2013).

<sup>7</sup> V. Ju. Melnikov, *Obespecheniye I zaschita prav cheloveka pri priminenii mer protsesualnogo prinuzhdeniya v dosudebnom proizvodstve Rossiyskoy Federatsii*: Doctoral dissertation (Moscow, 2014).

<sup>8</sup> S. A. Sinenko, *Obespecheniye prav i zakonnykh interesov poterpevshego v ugovnom sudoproizvodstve: teoreticheskiye, zakonodatelnye i pravoprimeritelnye problem*: Doctoral dissertation (Moscow, 2014).

<sup>9</sup> N. E. Martynenko, *Ugolovno-pravovaya okhrana poterpevshego*: Doctoral dissertation (Moscow, 2015).

<sup>10</sup> D. A. Ivanov; A. S. Esina; P. V. Fadeev; O. G. Chasovnikova y E. A. Zorina, "Crime Victim Compensation", *Gênero e Direito* Vol: 9 num 4 (2020): 753-758 y D. A. Ivanov y I. V. Filatova, "Vozmescheniye vreda prichinennogo prestupnoy legalizatsiyei denezhnykh sredstv kak strategicheskii printsyp pravovogo obespecheniya ekonomicheskoy bezopasnosti", *Vestnik Moskovskogo universiteta MVD Rossii* num (2019): 129-133.

The comparative legal method allowed us to study international legal standards and foreign experience of compensation for harm caused by a crime, to formulate the most important condition for ensuring compensation for harm caused by crimes, enshrined in the criminal procedure laws of most developed countries, as well as to reduce the time interval between the moment the harm was caused by a criminal act and its actual compensation by creating a model of compensation mechanisms and legal guarantees. This method also allowed us to form the authors' position on the implementation and possible application in the Russian reality of certain mechanisms of compensation for damage caused by a crime, which have been successfully tested, using the practice of law enforcement in foreign countries.

The application of the formal legal method allowed us to characterize the existing situation associated with the insufficiently effective application of the pre-trial procedure for compensation for damage caused by a crime, analyze the identified problems, classify them and propose solutions.

Analysis and synthesis methods application helped to obtain real data about the effectiveness of pre-judicial order of compensation of the harm caused by the crime, and to identify the existing gaps of criminal procedural regulation of activities of officers conducting the preliminary investigation, to provide redress to crime victims.

The sociological method of research enabled us to get real results of empirical research, as well as to analyze, systematize and generalize them.

As a result of this methodology application, new knowledge was gained about the links and patterns of development of the institution of compensation for damage caused by a crime in pre-trial proceedings in criminal cases, trends and prospects for its further improvement in terms of improving the effectiveness of officials conducting preliminary investigations to ensure guarantees of compensation for harm to victims of crimes.

## Results Analysis

According to the content of article 4 of the Declaration of basic principles of justice for victims of crime and abuse of power, adopted on November 29, 1985 by resolution 40/34 of the UN General Assembly, victims of crime have the right to access justice mechanisms and request compensation for the damage caused in accordance with national legislation<sup>11</sup>.

Protection of the rights of victims of crimes and compensation for harm caused is guaranteed by the provisions of articles 46 and 52 of the Constitution of the Russian Federation.

The relevance of this topic related to compensation for harm caused by a crime is confirmed by a two-component aspect.

First, this is a theoretical component, since the presence of these problems in the domestic legal doctrine requires a rethinking of approaches to making a unified model for regulating this area of activity.

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<sup>11</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Adopted by General Assembly resolution 40/34 of 29 November 1985). Available at: [https://www.unodc.org/pdf/compendium/compendium\\_2006\\_part\\_03\\_02.pdf](https://www.unodc.org/pdf/compendium/compendium_2006_part_03_02.pdf)

Secondly, the need for a joint and uniform approach to the implementation of activities to ensure compensation for harm caused by a crime by the preliminary investigation bodies. This is confirmed by the fact that no operational meeting held at various levels of the Ministry of Internal Affairs, related to the consideration of issues of operational and official activities of Internal Affairs bodies, does not take place without putting on the agenda an issue related to the effectiveness of activities to compensate for criminal damage.

Statistical data also indicates the significance of this activity.

Damage from crimes (for completed and suspended criminal cases) amounted to 561.6 billion rubles, which is by 14.2% higher than last year. According to the form of the federal statistics “Data on the state of crime and crime investigation results” on 2019.

At the same time, in 2019, the amount of damages for crimes where criminal cases have been completed and suspended by investigators and law enforcement investigation agencies, amounted to 563 billion rubles, including 403.8 billion rubles for economic acts. Simultaneously, the amount and specific weight of the compensated damage increased. The amount of damages for economic crimes increased by 51.7% (from 47.7 billion rubles to 72.4 billion rubles).

Concurrently, the compensated damage increased and reached 47.3 billion rubles.

At the same time, on average in Russia, the proportion of amounts actually recovered for damages in criminal cases that have been completed varies annually around 15-20% of the total amount of damage caused. All this indicates the urgency, relevance and importance of considering issues related to compensation for harm caused by criminal acts<sup>12</sup>.

These large-scale figures reflect only the property damage caused to the state, legal entities and individuals, not to mention the other two types of damage – moral and physical, which, according to current legislation, are also subject to compensation. There is no accounting for these types of harm from crime using statistical data.

Statistics shows an annual increase in the amount of criminally caused harm, which cannot be ignored by absolutely all state authorities.

The law enforcement agencies management also points out the need to step up work on compensation for damage caused by crimes, improve the effectiveness of pre-trial activities aimed at locating, removing and returning stolen property to victims, and expand the practice of detecting and recovering assets located abroad in order to impose an arrest to ensure a civil claim<sup>13</sup>.

One of the main tasks of the internal Affairs bodies of the Russian Federation is to improve the effectiveness of activities aimed at compensating for harm caused as a result of crimes.

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<sup>12</sup> The State Program of the Russian Federation on “Ensuring public order and counteracting crime”. Available at: <http://www.pravo.gov.ru/>

<sup>13</sup> A. Romanov reviewed the work of pre-trial investigation authorities of the Ministry of Internal Affairs of Russia in for the first six months of 2018. Retrieved from: <https://xn--b1aew.xn--p1ai/news/item/13959541/>

It should be emphasized that these actions are carried out by MIA of Russia in cooperation with the General Prosecutor of the Russian Federation, Investigative Committee of the Russian Federation, FSB of Russia, Federal bailiff service of Russia, Rosfinmonitoring, and other Federal Executive authorities within the framework of existing agreements<sup>14</sup> and interagency groups on issues of combating corruption through the exchange of relevant information, joint meetings and working meetings<sup>15</sup>.

Speaking about the activities of investigators and interrogators, it should be noted that during the investigation of each criminal case, they take measures to find and seize stolen funds or property from the guilty people in order to return them to their rightful owners<sup>16</sup>, but often suspects (accused) do not have such property.

It is also interesting that the largest share of damages in criminal cases is paid out of money and property voluntarily reimbursed by suspects and accused<sup>17</sup>.

In accordance with article 160.1 of the criminal procedure code of the Russian Federation, investigators and inquirers also take measures to establish the property of the suspect or the accused and to seize it.

Activities of establish property obtained by criminal means, to which sanctions can be applied, are also executed within the framework of the execution of order of the Prosecutor General of the Russian Federation, Rosfinmonitoring, the Ministry of internal Affairs of the Russian Federation, the FSB of Russia, the FCS of Russia, the Investigative Committee of the Russian Federation dated 21.08.2018 No. 511/244/541/433/1313/80 "On approval of Instructions for organizing information interaction in the field of countering the legalization (laundering) of money and other property obtained by criminal means".

An example of effective cooperation in this issue are the materials of the criminal case investigated by Department UMVD of Russia on the Nizhnekamsky district of the Republic of Tatarstan in respect of H, presented in PJSC "Sberbank of Russia" knowingly false information about the financial condition of his company, then as the loan was improperly obtained and the stolen cash in the amount of 81 million rubles. Based on information from the Federal financial monitoring service for the Volga Federal district, it was established that the accused owned non-residential buildings and apartments with a total value of 30 million rubles, which were seized during the investigation.

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<sup>14</sup> Agreement with the Office of the Procurator-General of the Russian Federation "On the exchange of information in the area of anti-corruption"; Agreement with Rosfinmonitoring of May 12, 2014 "On the informational exchange". March 21, 2016.

<sup>15</sup> The order of the Ministry of Internal Affairs, Investigative Committee, and FSTEC of Russia "On creating an inter-agency working group on crime compensation". September 16, 2015.

<sup>16</sup> V. V. Pushkarev, A. Gaevoy, A. V. Skachko, A. Kolchurin, D. N. Lozovsky, "Criminal Prosecution and Qualification of Cybercrime in the Digital Economy", Journal of Advanced Research in Dynamical and Control Systems Vol: 11 num 8 (2019): 2563-2566 y V. V. Pushkarev; P. V. Fadeev; S. A. Khmelev; Nguyen Van Tien; E. A. Trishkina y A. A. Tsviliy-Buklanova, "Crimes in the Military-Industrial Complex (MIC)", International Journal of Recent Technology and Engineering (IJRTE) Vol: 8 num 3 (2019): 7950-7952.

<sup>17</sup> Nguyen Thi Lan Hong y Tran Van Tuyen ex, "Criminal prosecution of persons who do not speak the language of criminal process", Revista Inclusiones Vol: 7 num Especial (2020): 121-125 y V. V. Pushkarev; E. A. Trishkina; E. V. Tokareva; B. T. Cuong y O. R. Shepeleva, "The adversarial approach in the pretrial phase of prosecution", Cuestiones Políticas Vol: 37 num 65 (2020): 281-287.

Moreover, we note that the main types of seized property are money, securities belonging to suspects, accused shares in the authorized capital of legal entities, real estate (houses, apartments, land plots, industrial premises), vehicles, industrial equipment, jewelry, fur products, Antiques.

However, despite the increase in the effectiveness of activities in this direction, both scientists and practitioners state an insufficient level of compensation for the harm caused by the crime.

Monitoring o problematic issues of law enforcement practice also showed the need for a fundamental study of the problems for compensation for harm caused by crimes and the development of theoretical and legal provisions aimed at improving the criminal procedure law.

The authors see an urgent need to develop a scientifically based algorithm of actions, which consists in developing proposals for resolving issues related to the activities of officials conducting preliminary investigations to compensate for harm caused by a crime.

## Conclusion

The fundamental idea, justified by the authors in this article, is, first of all, to further improve the activities of authorized participants in criminal proceedings to compensate for harm caused by a criminal act, and as a result, to restore social justice, since this task is not only purely legal, but also truly social, political and economic importance. Achieving this goal will increase the level of trust of citizens in public authorities in General, and law enforcement agencies in particular. This is stated in various legal acts, as a global goal of the ongoing large-scale reforms regulating the activities of pre-trial investigation bodies, as well as the implementation of universal control over this type of activity by various civil society institutions.

It is proved that the element composition of the legal institution of compensation for damage caused by a crime includes:

an object that includes a conceptual framework, as well as an indication of specific types of harm caused by a crime, criteria for its differentiation and evaluation;

subjects of ensuring compensation for harm in pre-trial proceedings (investigator, inquirer, head of the investigative body, head of the inquiry division, head of the inquiry body);

the procedure for compensation of harm, that is, a set of mutually complementary procedural tools used in the course of a preliminary investigation by appropriate officials (civil action, criminal procedural restitution, provision of voluntary compensation for harm);

procedural and judicial control, as well as Prosecutor's supervision of the activities of the head of the investigative body, the head of the inquiry body, the head of the inquiry unit, the investigator, the inquirer to ensure compensation for damage caused by a criminal act. The conclusion is substantiated that the forms of compensation for harm caused by a crime are: voluntary compensation in the course of preliminary investigation; compulsory compensation, which is carried out by finding, withdrawing and returning property to the owners or other legal owners.

It is proved that the algorithm of actions to ensure redress for harm caused by the crime, must function effectively from the outset of a criminal case, due to the fact that the initial information on the nature and size of the damage received in this stage of the criminal process, is a source of planning the further course of the preliminary investigation extension of the investigative versions, and allows to predict a specific investigative situation implying the implementation of the rights of victims of crimes, the actual compensation for the harm caused by the crime in pre-trial proceedings in criminal cases.

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