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Material and intangible values subject to compensation to a victim of crime in criminal proceedings of the Russian Federation and the Socialist Republic of Vietnam

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Abstract

Using the analytical method, the article discusses issues related to compensation for property damage, moral damage and damage to business reputation caused by a criminal act. To understand the essence of property damage, the following signs of property subject to criminal usurpation are distinguished: physical, legal, and economic. This classification of the attributes of the property makes it possible to determine its legal understanding to create the conditions for compensation for material damage caused by a crime. The hypothesis that corporate reputation is an integral element of a concept such as «moral damage caused by a crime» has been demonstrated. This makes it possible to express the idea of the need to unify the understanding of the essence of moral damage and the possibility of including in its content the damage to the business reputation, as well as a unified approach to the procedure for its compensation in case of a criminal offense. It is concluded that the damage to the business reputation and the moral damage are the same in their essence and content, therefore, when compensating for the damage

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caused to the business reputation, the rules on compensation for moral damage apply.

Keywords: property damage; victim of moral damage; damage to business reputation; civil plaintiff; intangible material values.

Valores materiales e intangibles sujetos a indemnización a una víctima de un delito en los procesos penales de la Federación de Rusia y la República Socialista de Vietnam

Resumen

Mediante el método analítico, el artículo analiza cuestiones relacionadas con la indemnización por daños a la propiedad, el daño moral y el daño a la reputación empresarial causados por un acto delictivo. Para comprender la esencia del daño patrimonial, se distinguen los siguientes signos de propiedad objeto de usurpación delictiva: físicos, jurídicos y económicos. Esta clasificación de los atributos de la propiedad permite determinar su entendimiento jurídico a fin de crear las condiciones para la indemnización de los daños materiales causados por un delito. Se ha demostrado la hipótesis de que la reputación empresarial es un elemento integral de un concepto como «daño moral causado por un delito». Lo anterior permite expresar la idea de la necesidad de unificar el entendimiento de la esencia del daño moral y la posibilidad de incluir en su contenido el daño a la reputación empresarial, así como un enfoque unificado del procedimiento para su indemnización en caso de un delito penal. Se concluye que el daño a la reputación empresarial y el daño moral son los mismos en su esencia y contenido, por lo tanto, al compensar el daño causado a la reputación empresarial, se aplican las reglas sobre compensación por daño moral.

Palabras clave: daño patrimonial; víctima de daño moral; daño a la reputación empresarial; demandante civil; valores materiales intangibles.

Introduction

Currently, Art. 35 of the Constitution of the Russian Federation states that the right to private property is protected by law, and everyone has the right to own property, own, use and dispose of it both individually and jointly with other persons.

One of the grounds for recognizing a person as a victim in accordance with the text of the norms of Part 1 of Art. 42 of the Code of Criminal Procedure of the Russian Federation is the fact of causing property damage by a criminal offense.

1. Materials and methods

As the main method in the process of writing this scientific article, the authors used the general scientific systemic method of cognition, which made it possible to comprehensively consider the material and intangible benefits that are subject to compensation to a victim of a crime in the criminal proceedings of the Russian Federation.

The systematic approach method allowed us to consider topical issues related to ensuring compensation for property, moral damage and damage to business reputation caused by a criminal offense at the stages of initiating a criminal and preliminary investigation, as well as to study the interaction of the investigator with the inquiry authorities at these stages of pre-trial criminal proceedings.

The use of methods of analysis and synthesis made it possible to identify existing problems in the law enforcement practice of ensuring compensation for property damage, moral damage and damage to business reputation in the course of pre-trial proceedings in criminal cases.

The historical and legal method made it possible to study the genesis and legal nature of material and intangible benefits subject to compensation to a victim of a crime in the criminal proceedings of the Russian Federation.

The formal-logical method made it possible to analyze the activities of the investigator and the interrogator to ensure compensation for property, moral damage and damage to business reputation caused by crimes in the course of pre-trial criminal proceedings and put forward proposals for improving legislation in this area.

As a result of the application of this methodology, new knowledge was obtained of material and intangible benefits subject to compensation to a victim of a crime in the criminal proceedings of the Russian Federation, as well as on trends in the improvement of legislation in order to optimize the work of an investigator, an inquiry officer to ensure compensation for harm, to persons who are victims of crimes.

2. Results analysis

Paragraph 13¹ of Art. 5 of the Code of Criminal Procedure of the Russian Federation contains a very significant list of material objects included in the category of property. In particular, this rule states that property is any thing, including cash and documentary securities; non-cash funds in accounts and deposits with banks and other credit institutions; uncertificated securities, the rights to which are recorded in the register of owners of uncertificated securities or a depository; property rights, including rights of claim and exclusive rights.

To understand the essence of the phenomenon under consideration, it seems logical to single out the following attributes of property.

The *physical attribute* means that property is always material in its essence, that is, it has a feature of a thing or is intangible, but at the same time it can be materialized in certain cases (for example, cashing out funds in accounts and deposits in banks). At the same time, ideas, views, manifestations of the human mind, information (intellectual property) cannot be considered property. We can speak of property as intellectual property only in a figurative sense, meaning, for example, violation of copyright and related rights, which are now often identified with the term “plagiarism”.

The *economic attribute* means that a property always has a certain economic value. The usual expression of the value of a property is its value, i.e. a certain value in monetary terms. Therefore, money, currency values and other securities (stocks, bonds, etc.), which are equivalent to value, are also considered property that can be infringed upon.

The *legal attribute* assumes that the property always belongs to certain entities (the owner or other legal owner). The fact that property belongs to a certain entity must be documented (ownership, general power of attorney, donation agreement, inheritance, etc.).

Not only specially protected property should be considered in the possession of the owner, but also property to which there is free access – on the territory of the enterprise, in the premises of the institution, on the construction site or in another place of economic activity, on a vehicle, as well as anywhere, where it is temporarily unattended, if this property has not been lost by the owner.

At the same time, the above about the essence and meaning of the concept of “property” in this article is used in relation to the infliction of property damage by a crime and the issues of ensuring its compensation in pre-trial proceedings.

Within the framework of the issue under study, taking into account the current criminal procedural legislation, Y.N. Zvereva argues that loss of profit should also be included in property damage (Zvereva, 2015). J.V. Samoilova adds that in order to include lost profit in the amount of property damage, it is required that it be proven (Samoilova, 2011).

However, the authors cannot agree with these statements, since the lost profit as an element of damage caused to property can be such within the framework of other legal relations: civil, labor, etc. It seems illogical to say that a crime can cause property damage in the form of a certain amount of lost profit, due to the absence of a direct causal link between the criminal act and the possible benefit that the owner would acquire under a different set of circumstances, which can be confirmed by the following points.

First of all, the civil claim filed by the victim presupposes the indication of a specific amount of money in which the property damage caused is expressed. Moreover, this amount must be documented: sales receipts, receipts, consignment notes, the conclusion of a commodity examination or a protocol of interrogation of the victim, where he indicates the amount of property damage caused to him, if there are no documents for the property.

Second of all, as indicated in Part 1 of Art. 44 of the Code of Criminal Procedure of the Russian Federation, one or another harm to a person must be caused directly by a crime (as well as a socially dangerous act committed by a person in a state of insanity). In our understanding, this is precisely a certain amount of property damage, which the person claims after the fact of the crime has been realized by him and the specific amount of damage caused is indicated in the materials submitted to the investigator, the interrogating officer. It is difficult to imagine that in such documents the calculation of the amounts of lost profits can be made due to the lack of prerequisites for this in the current criminal procedure law.

Even earlier (in 1964) P.P. Gureev reasonably believed that property damage should be understood as a decrease or complete elimination of property benefits, as well as other violations of a person's rights as a result of a crime committed against him (Gureev, 1964). Note that both in that time period and today it is hardly possible to talk about lost profits, allegedly not received as a result of a committed criminal offense.

It should also be clarified that in the course of studying the materials of the criminal cases, the authors did not find examples confirming the claim for compensation along with the real property damage and lost profits.

But even being a supporter of compensation for lost profits in the framework of criminal proceedings, M.Kh. Abdrakhmanov expresses absolutely opposite arguments in support of his position, pointing out that the lost profit can be proved only with a certain degree of probability (Abdrakhmanov, 2008). Rights in this context E.S. Nikulin, who pointed

to the existence of many problems, in connection with which the lost profit can hardly be correctly calculated and fairly recovered, at least in the framework of criminal proceedings (Nikulin, 1983, p. 94).

In the materials of the studied criminal cases, there were cases when the victims filed claims for compensation for lost profits, as an element of property damage caused by the crime. At the same time, the court (judge), when considering a criminal case, dismissed the claim in this part in 32.9% of cases, or the victims did not file such claims at all – 54.6%. Only in 4.5% of cases the victims put forward such claims, and the court, when considering a criminal case, satisfied the claim in terms of compensation for lost profits as a component of property damage.

Speaking about the concept of property damage caused by a crime, it is advisable to draw attention to the decision of the People's Supreme Court of the Socialist Republic of Vietnam dated July 08, 2006 No. 03/2006/NQ-TATC. Clause 3 of this resolution defines that property damage should be understood as harm that can be expressed in monetary form, in property law, in damage directly caused by the crime and (or) destruction of the victim's property. Thus, we can say that in its position, the Supreme People's Court of the Socialist Republic of Vietnam does not maintain the relationship between property damage and loss of profits.

Speaking about one of the problems of the priority of compensation for harm to those or other persons who have suffered from a crime, L.N. Maslennikova as a whole reasonably believes that in the presence of both the owner and the title owner of the property, the owner first of all has the right to compensation, since the civil action primarily protects the right of property (Maslennikova, 2004).

But this position still needs significant clarification. In particular, it is necessary to take into account the fact that the right to compensation for damage caused to property is equally vested in all persons to whom it legally belonged. With regard to the field of civil law relations, if we are talking about a tort that violates property rights, then the interpretation proposed by L.N. Maslennikova, is quite acceptable. However, in cases where the sphere of legal relations falling under the regulation of criminal procedural legislation is meant, all subjects who owned or otherwise legally owned the property that became the subject of a criminal encroachment have equal rights to file a civil claim, in connection with which they have suffered certain harm.

In connection with the afore mentioned information, it is necessary to clarify the forms of compensation for property damage caused by a crime. In particular, I.S. Barinov and E.Y. Antonova offer the following options for such activities: return to the victim of property that has become the subject of a crime (since it acts as material evidence, this is possible only indirectly);

monetary compensation for harm to suspects, accused; restoration of damaged property of the victim (Barinova, Antonova, 2015).

The authors also clarify that compensation may also take place by transferring other equivalent property to the victim, as well as by providing other services that have a certain value expression for the person who has been harmed.

It should be added that these forms are very effective if the suspect or the accused wants to voluntarily compensate for the harm caused to them. However, speaking about the legal institution of compensation for harm caused by a crime, it should be noted such procedural methods as the seizure of property, a civil claim, and criminal procedural restitution.

Summing up the essence of property damage caused by a crime, it should be said that the legislator took a well-founded position, having formulated the concept of property in Paragraph 131 of Art. 5 of the Criminal Procedure Code of the Russian Federation. However, we believe it necessary to supplement the content of this article of the Criminal Procedure Code of the Russian Federation with the concept of “property damage”, in connection with which it is advisable to supplement article 5 with Paragraph 132 of the following content: “Property damage is harm caused directly to the property of a person in the form of its loss, damage or destruction, as well as property rights, including the right to claim, subject to compensation to the person who made a claim in accordance with the procedure established by this Code”.

Further, it seems expedient to dwell on such concepts as *moral harm* and *harm to business reputation*.

Speaking about compensation for moral harm, protection and restoration of the rights of persons who have become victims of criminal acts, M.A. Kravtsova believes that these categories have not only legal, but also moral components (Kravtsova, 2015).

Arguing about moral harm as a negative consequence of criminally punishable acts, the rights of E.N. Kleshchina, indicating that moral harm is present in almost every case of a crime, but in different situations it manifests itself in different ways (Kleshchina, 2010). Moreover, the specificity of moral suffering lies in the fact that after the commission of a crime, they do not pass, but continue for a rather long time. According to E.L. Sidorenko, this situation takes place in the overwhelming majority of criminal cases (Sidorenko, 2011). Pointing to the consequences of the crime, K.B. Kalinovskiy supports the point of view of the above authors (Kalinovskiy, 2016).

The opposite position is taken by N.V. Krivoshchekov, who asserts that moral harm arises from damage to property, and therefore does not acquire an independent significance (Krivoshchekov, 2004).

In the presented polar opinions, we tend to the position of E.N. Kleshchina, E.L. Sidorenko and K.B. Kalinovskiy, since, based on the design of Part 1 of Art. 42 of the Code of Criminal Procedure of the Russian Federation, absolutely any crime inflicts one or another type of harm, and a person suffering negative consequences has the right to count on its full and real compensation (compensation), regardless of its nature.

At the same time, there is also an “external logical framework” for such moral harm, which cannot be compensated for in cases where a person was an eyewitness to the committed act, even if the person received serious psychological trauma. In addition, there are crimes when no moral harm is inflicted at all (as well as other types of harm). An example of such an act is illegal crossing of the State border of the Russian Federation (Art. 322 of the Criminal Code of the Russian Federation).

The study of international experience in understanding moral harm allows us to conclude that in most countries, this harm is considered as a separate type of harm, which often expresses in the form of emotional and moral feelings and suffering of a person. As an example, we can cite the provision of the resolution of the Presidium of the Supreme People’s Court of the Socialist Republic of Vietnam dated April 28, 2004 No. 01/2004/NQ-HĐTP “On instructions for the application of certain provisions of the Civil Code of the Socialist Republic of Vietnam on non-contractual compensation for harm”, according to which moral harm is defined as suffering experienced a person (or his close persons) in violation of his right to life, health, honor, dignity, and reputation.

Arguing about the positions of the Russian scientific community in terms of the relevance of issues of domestic law enforcement experience of compensation for moral damage caused by a criminal act, one cannot fail to note the fact that these issues are often the subject of consideration in the European Court of Human Rights (hereinafter the ECHR) (Grinenko, 2008).

In particular, in its judgment in the Kanayev case against the Russian Federation, the ECHR draws the attention of the law enforcement officer to such an important aspect, which is the need to take into account Rule 60 of the Rules of Court, which prescribes that “any claim for just satisfaction must be examined point by point and presented in written form together with the relevant supporting documents or written evidence, failure to provide which may be the reason for the rejection by the European Court of all or part of the claim”.

Further, examining the essence and content of such very close concepts as moral harm and harm to business reputation, it can be stated that they are divided by the legislator into different legal categories.

First, we should define the concept of “business reputation”, focusing on the term “reputation”. In a purely legal sense, “reputation” (from the Latin “ponder, reflect”) is the created public opinion about the merits and demerits of someone.

At the same time, with a business reputation, many scientists personify a certain set of qualities and assessments (Mikhno, 1998, p. 122-123; Kopik, 2014, p. 105-106). It can be argued that it is a personal moral right. At the same time, business reputation is characterized by social relations in which there is no property component.

Regarding the business reputation inherent in a legal entity, it should be said that it has a material component and can be determined in a specific monetary equivalent, and must also be reflected in financial documents.

L.I. Yarovikova, who claims that the business reputation of enterprises and institutions ensures the successful economic activity of the respective legal entity (Yarovikova, 2001, p. 64). At the same time, it should be added that the category “business reputation” can also be applied to legal entities that do not set themselves the goal of making a profit (for example, various public associations).

Arguing about such a category of victims of crimes as legal entities, it should be said that the negative consequences of a criminal act for this category of victims can be expressed as undermining confidence in their authority, for example, in the credit and banking sector, potentially causing harm to the entire basic element of the financial system states (Pushkarev *et al.*, 2020; Pushkarev *et al.*, 2021), and in the negative dissonance caused by the loss of leading positions in a certain field of activity, in causing property damage, the emergence of unfair competition, as well as in other negative post-criminal consequences.

The procedure for compensation for damage to the business reputation of a legal entity caused as a result of a criminal act is similar to the rules for compensation for moral damage caused to individuals. It is reasonable to point out that even in the era of the RSFSR Code of Criminal Procedure, many procedural scientists promoted the idea of compensation for moral damage to legal entities if it was caused as a result of the dissemination of information discrediting its business reputation (Brusnitsyn, 1995; Khatuaeva, 2000).

In cases of causing moral harm to an individual, he has the right to declare a claim for his property compensation. Similarly, a legal entity that has suffered from a crime has the right to claim a property equivalent in compensation for damage caused to its business reputation. At the same time, scientific polemics continued for a long time regarding the possibility of causing moral harm to a legal entity. A number of scientists, and in different branches of legal sciences, substantiate the position that legal

entities can also be inflicted moral harm (Afanasyeva and Belova, 2002). Opponents of this tendency substantiate their position with the arguments that moral harm can be expressed exclusively in physical and mental suffering, which can only be experienced by a person (physical person) (Bezlepkin, 1998; Zavidov and Kurina, 2002; Ivanov *et al.*, 2021).

A historical excursion defines the emergence of the concept of “moral harm” in the Russian legal doctrine by the moment of approval in the Code of Laws of the Russian Empire in 1835 provisions concerning compensation for harm caused to personal health. But for the first time, the legislator provided for the possibility of resolving issues of compensation for moral harm in criminal proceedings only in Art. 53 of the Code of Criminal Procedure of the RSFSR 1960, which, together with the facts of causing physical and property damage, indicates the possibility of recognizing a person as a victim in cases of causing him moral harm.

The modern interpretation of the term “moral harm”, based on the provisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated December 20, 1994 No. 10, allows us to say that it “may consist in moral experiences in connection with the loss of relatives, the inability to continue an active social life, loss of work, disclosure family, medical secrets, dissemination of untrue information discrediting the honor, dignity or business reputation of a citizen, temporary restriction or deprivation of any rights, physical pain associated with injury, other damage to health or in connection with an illness suffered as a result of moral suffering, etc.”. Let us add that moral harm also takes place in cases where there was an attempt to commit a crime.

Let us note the opinion of V.I. Shvetsov, who very succinctly expressed the possibility of causing moral harm to a legal entity, pointing out that such harm can lead to discrediting, undermining the authority of a particular legal entity (Shvetsov, 1999). Having a similar position, Ch.H. Chang in his work substantiated the conclusion that moral harm to a legal entity manifests itself in the form of infringement on the reputation, reduction or loss of trust of society, clients and other persons to this legal entity (Chang, 2000). At the same time, it should be clarified that moral harm is expressed not only in the consequences, but also in feelings about the possibility of their occurrence.

Let us also cite the position of V.V. Khatuayeva, who proposes to use the institution of compensation for moral harm as a criminal procedural remedy (Khatuayeva, 2000). Justifying the consistency and viability of this proposal, we note that the draft Code of Criminal Procedure of the Russian Federation contained a provision that was literally stated in the following edition: “A victim may be a legal entity that has suffered moral or material harm by a crime” (Clause 11, Art. 49 of the Draft Code of Criminal Procedure of the Russian Federation).

In this case, it was assumed that the rights and obligations of the victim were exercised by a representative of the legal entity. However, when accepting the final version of the criminal procedure law, the legislator preferred another, known to us, formulation – harm to the business reputation of a legal entity.

In the course of preparing this study, a sociological survey was conducted in order to obtain data on the issue of differences in the understanding of such terms as “moral harm” and “harm to business reputation”. In particular, 76.8% of the respondents answered positively to the question that these terms should be considered as equivalent concepts.

It is logical to substantiate these results with arguments, the essence of which boils down to the fact that an official in whose proceedings a criminal case on the fact of inflicting “moral harm” and “harm to business reputation”, sees as his goal to ensure real compensation, while understanding the legal nature of these terms.

Speaking about a unified approach to the meaning of the terms under consideration, the provisions of the Code of Criminal Procedure of the Republic of Uzbekistan can be cited as a positive example, in Art. 54 of which it is indicated that moral, physical or property harm can be caused to both an individual and a legal entity.

In this regard, it should be noted and the Criminal Procedure Code of the Republic of Belarus, where the legal definition of moral harm is set out in Paragraph 5 of Art. 460, wherein moral harm means causing not only moral or physical suffering to individuals, but also damage to business reputation (we assume both a legal entity and an individual).

Thus, the above circumstances and their justification allow us to formulate the author’s vision and proof of the conclusion about business reputation as an integral element of moral harm. At the same time, these arguments allow us to express the idea of the need to unify the understanding of the essence of moral harm, the possibility of including harm to business reputation in its content, as well as a unified approach to the procedure for its compensation in the event of a criminal offense.

Speaking about the modern judicial practice of compensation for moral harm, you can refer to the resolution of the Plenum of the Supreme Court of the Russian Federation dated February 24, 2005 No. 3 “On judicial practice in cases of protecting the honor and dignity of citizens, as well as the business reputation of citizens and legal entities”, which says that the dissemination of information discrediting the honor and dignity of citizens or the business reputation of citizens and legal entities should be understood as the publication of such information in the press, broadcast on radio and television, demonstration in newsreel programs and other media, distribution on the Internet.

The above described legislative constructs and theoretical views allow us to summarize that business reputation and moral harm are the same in their essence and content, and when compensating for harm caused to business reputation, the rules on compensation for moral harm are applied.

Conclusions

In conclusion, we believe it expedient to formulate the following conclusions regarding the issues of compensation (compensation) of material and intangible benefits that have been negatively affected because of a committed criminal act and are subject to compensation in the framework of criminal proceedings.

It is proposed to supplement Art. 5 of the Code of Criminal Procedure of the Russian Federation with clause 13² of the following content: “13²) property damage - damage caused directly to the property of a person in the form of its loss, damage or destruction, as well as property rights, including the right to claim, subject to compensation to the person who made a claim about it in the procedure established by this Code”.

Through the analysis of legislative structures and the study of theoretical views the authors have summarized the conclusion that harm to business reputation and moral harm are the same in their essence and content, and when compensating for harm caused to business reputation, the rules on compensation for moral harm are applied.

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⁷ In some cases, only the initial of the name of the cited authors is included because it appears in the original source, and it was not possible to locate their full name.

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