COMPENSATION FOR PHYSICAL HARM CAUSED BY A CRIME IN THE RUSSIAN FEDERATION

INTRODUCTION

All the consequences of a crime that cause this or that harm can be divided into two types of benefits, which are negatively reflected in criminally punishable acts. In the first case, material benefits suffer from the crime and property damage is caused to the victims. In the second case, crimes infringe on intangible benefits (health, human life, business reputation, psychological state, etc.). At the same time, as a result of the commission of crimes, the victims suffer physical harm, moral harm and damage to business reputation.

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 and fully analyze the controversial issues related to compensation for physical harm caused by a crime in the criminal proceedings of the Russian Federation. The method of a systematic approach made it possible to consider the procedural aspects of the activities of an investigator, an inquiry officer to ensure compensation for physical harm caused by a crime in pre-trial proceedings in criminal cases. The use of the comparative legal method made it possible to study in detail the domestic legislation regulating the activities of the investigator, the inquirer to ensure compensation for physical harm caused by the crime, as well as other regulatory legal acts in the area under study. Using this method, it was possible to identify existing problems, propose ways to solve them, and also formulate proposals for improving the criminal procedural legislation of Russia.

The use of methods of analysis and synthesis made it possible to identify existing problems in the law enforcement practice of ensuring compensation for physical harm caused by a crime in the course of pre-trial proceedings in criminal cases.

The formal-logical method allowed the authors to analyze the procedural independence of the investigator, inquirer in the course of procedural actions aimed at ensuring compensation for physical harm caused by a crime in pre-trial criminal proceedings. As a result of the application of this methodology, the authors obtained new knowledge in order to improve the mechanism of compensation for physical harm caused by a crime, as well as on trends in the improvement of legislation in order to increase the efficiency of the activities of officials carrying out preliminary investigations.

RESULTS ANALYSIS

Regarding the monetary value of the categories of harm caused by a criminal offense considered by the authors, an example from the Criminal Procedure Code of the Republic of Belarus seems to be successful. So, in paragraph 2 of Art. 6 of the specified act contains a rather short, but still very verified concept of harm, which is understood as physical, property or moral harm subject to monetary measurement. Similarly, part 1 of Art. 166 of the Criminal Procedure Code of the Republic of Kazakhstan states that in the criminal process civil claims of individuals and legal entities are considered for compensation for property and moral damage caused
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The experience of the legislator of the Republic of Azerbaijan deserves special attention precisely from the point of view of specifying in the criminal procedural law specific amounts of monetary payments in compensation for damage caused, which are calculated based on the severity of the criminal offense committed (Article 190 “Amount of compensation given to the victim” Code of the Republic of Azerbaijan).

Commenting on the provisions of the domestic criminal procedure law, E.M. Nikolaev as a whole reveals the elements of material and intangible benefits subject to reimbursement and compensation. According to his position, compensation should cover: damage (including physical and mental); missed opportunities in various spheres of social life (employment, education, etc.); material and moral damage; expenses for qualified legal and other assistance related to criminal proceedings; expenses for treatment, as well as for other assistance, including social and psychological (NIKOLAEV, 2010, p. 65). Agreeing on the whole with this position, it is necessary to clarify and supplement it with the following.

Firstly, this list is not exhaustive in its legal nature, since the Code of Criminal Procedure of the Russian Federation (part 1 of Art. 42 of the Code of Criminal Procedure of the Russian Federation) also presupposes compensation for damage caused to the business reputation of legal entities. Some authors also propose to compensate for environmental, organizational and other types of harm (ZVEREVA, 2015, p. 11; KOZHIN, 2006, p. 10). Thus, other types of benefits are subject to compensation (compensation), which have suffered certain damage, damage or complete destruction as a result of a committed criminal act.

Secondly, within the framework of criminal proceedings, it is advisable to use the term “harm” rather than “damage”, in view of a unified approach to the issues of compensation and compensation of the material and non-material benefits under consideration (IVANOV et al., 2020a, 2020b). Speaking about specific methods of compensation for harm caused by criminally punishable acts, it should be noted that they traditionally distinguish between claim and non-claim methods. Focusing on the methods of compensation for harm, it must be said that each of them (voluntary compensation for harm by the person guilty of causing it or by third parties acting in the interests of the suspect, the accused; criminal procedural restitution; the institution of a civil claim) should be aimed at equal and full compensation for all categories of criminally inflicted harm.

However, as follows from the analysis of scientific literature, the greatest attention is paid to compensation for property damage (IVANOV, KRUGLIKOV, 2020). At the same time, issues related to compensation for moral and physical harm cause the greatest difficulties both among scientists and among law enforcement officials. We have obtained similar data from a survey of employees of the preliminary investigation and inquiry units. So, on the question of what kind of compensation for harm causes the greatest difficulties, the following data were obtained. In the activities of investigators, interrogators, difficulties arise in resolving issues of ensuring compensation for physical harm - 39.5%, moral harm (damage to business reputation) - 50.3%, property damage - 10.2%.

The current situation requires a search for ways to resolve it, both at the theoretical and practical levels, since compensation for harm of all categories is a fundamental task of both criminal proceedings in general and officials of the preliminary investigation bodies. This task, according to A.V. Sotonkin (2011, p. 189), must be resolved by all legal means. At the same time, we add that through the implementation of such methods of compensation for harm, property and non-property benefits belonging to a person (physical or legal) also acquire their original form and form, or are replaced with similar benefits, or are compensated in monetary terms.

Moving on to the consideration of the types of harm indicated in the criminal procedure law (Article 42 of the Criminal Procedure Code of the Russian Federation) as benefits subject to compensation (compensation), we believe, first of all, to consider certain aspects related to compensation for physical harm caused to a person. As practice shows, the relevance of the fight against violent crime in the modern period is undeniable. Counteraction to violence...
comes out on top among all other problems of concern to Russian society. Criminal violence, as an extremely dangerous form of activity, encroaches on the most valuable benefit – a person’s life, affects his health and bodily integrity, creates an atmosphere of fear, uncertainty about personal safety, concern for relatives and friends.

Human health is one of the important objects of criminal law protection. When assessing crimes that infringe on human health, one should proceed from the fact that earlier the criminal law did not disclose the concept of “harm to health”, which was formulated by the science of criminal law, taking into account medical aspects, according to which harm to health (as a criminal offense) was unlawful, guilty infliction of harm to the health of another person, expressed in a violation of the anatomical integrity or physiological function of organs and tissues of a person or the body as a whole. At the same time, referring to this issue in the framework of criminal proceedings, the authors note the diversity of opinions of scientists-proceduralists regarding the concept and content of physical harm caused by a crime as a good of a person subject to compensation.

Describing physical harm from the point of view of the totality of the physiological and mental states of the human body, K.A. Khavchaev (2007, p. 108) argues that the category of physical harm should include not only disorders of the body, but also various mental trauma, if this has caused a deterioration in human health. Let’s object to this approach, since, in our opinion, the concept of “moral harm” fully embodies all the negative post-criminal mental characteristics of the human body, and this should not be an element of physical harm.

A more detailed concept of physical harm caused by a crime is proposed by E.N. Kleshchina and D.V. Sharov (2012, p. 98), according to the conclusions of which physical harm is any negative change in the state of human health, including not only bodily injury, but also the appearance of diseases (for example, when a person is infected with HIV). Let us add that this is precisely why at present the degree of onset of such negative consequences is determined not by the concept of “bodily injury”, as it was in the Criminal Code of the RSFSR, but “harm to health”.

Above, we have given a number of opinions regarding the concept of physical harm from their significant number found in the scientific literature. Speaking about the concept of physical harm, we believe it is necessary to touch upon the consequences of criminally punishable acts, the result of which could be: death; serious, moderate or slight harm to health; a disease resulting from a perfect encroachment on the life and health of a person. Harm to health varies in severity to severe, moderate and mild. However, here one should not forget about beatings, as well as torture, which can also cause physical pain and suffering.

When considering the issue of compensation for the inflicted physical harm, it is important that the bodily injuries listed above also entail property-related consequences, among which should be highlighted: funeral services; loss of a source of permanent income due to the death of a breadwinner; loss of a source of income due to complete or partial disability; financial costs for treatment, prosthetics, medical rehabilitation, etc. On this basis, it can be reasonably argued that physical harm has a pronounced property expression in the form of expenses and lost profits.

For more than two decades, the only regulatory legal act that to a certain extent linked criminal procedural and other legal relations in the field of compensation for physical harm in the framework of criminal proceedings was the Fundamentals of Legislation of the Russian Federation on the Protection of Citizens’ Health of July 22, 1993, which regulated issues of compensation for this type of harm, including that caused by criminal acts.

The foregoing allows us to suggest that in the current realities, compensation for physical harm caused to human health through the collection of funds from the convicted person to the state income has now lost its relevance. This is explained by the creation and functioning of various institutions of the health care system, including state, municipal or private. Therefore, even if such penalties are to be made, it is not only against the state as the only monopolist in the health care system, but also for the benefit of other medical structures. At the same time, the victim himself must be directly involved in ensuring compensation for his physical harm, since
after inpatient treatment, the victim often undergoes outpatient treatment, which is not mentioned at all in the Fundamentals.

In this regard, it should be clarified that the adoption of separate normative legal acts to regulate such a complex aspect of criminal procedural activity as ensuring compensation for physical harm in the framework of criminal proceedings is clearly not enough. The position of the legislator is also understandable, which in this case refers the law enforcement officer to the rules governing civil proceedings. Moreover, Art. 45 of the Code of Criminal Procedure of the Russian Federation does not contain any instructions on the procedure and conditions for considering such claims. This allows the authors to state the fact that there is a gap in the criminal procedure law of Russia.

At the same time, as has already been noted more than once, the harm caused by the crime must be proven precisely within the framework of criminal proceedings. As part of the pre-trial stages, measures should be taken to locate the property of the accused and seize it, including the digital assets of the accused (cryptocurrency, etc.), which remain without due attention and assessment by the preliminary investigation bodies in the Russian Federation (PUSHKAREV et al., 2020a). It is rational to apply the necessary measures to reimburse him (compensation) both in the course of pre-trial proceedings and in the process of a court hearing a criminal case on the merits. At the same time, a number of authors (SELEDNIKOVA, 2008; SANDYBAEV, 2015) rightly argue that there is also an objective relationship between physical and property damage. Indeed, if there is physical harm, then it, as a rule, entails material costs on the part of the victim or other persons associated with him.

However, we consider it important to supplement the opinion of the above authors with the argument that the monetary value of the consequences of the physical harm inflicted is determined by the investigator, the interrogating officer and the court on the basis of medical documents (cards of inpatient and outpatient treatment and other documents related to payment for treatment: receipts, contracts for the provision of paid medical services, etc.). The cost estimate is subject to proof according to the rules of adversarial proceedings in a criminal case (PUSHKAREV et al., 2020b).

Based on the results of questioning the employees of the preliminary investigation bodies, the authors obtained the following data. Various answers were received about the form in which the harm caused to health was actually compensated for in the criminal cases in their proceedings. Thus, the physical harm caused by the crime was compensated within the framework of the preliminary investigation by the suspect, the accused by reimbursing the costs of the victim's treatment in 24.5% of cases; by paying insurance amounts, if the victim was insured in an insurance company - 12.5%; in other ways (compensated by the social protection authorities to persons entitled to preferential medical care - disabled people, war veterans, etc.; in accordance with the requirements of the victim, which he presented to the suspect, the accused) - only 7.8%. That is, in the course of pre-trial proceedings, this type of harm was not compensated at all in 55.2% of cases.

The current negative practice cannot but cause concern, since compensation for physical harm, in our opinion, should be guaranteed to the victim, starting from the moment when the victim started treatment and began to spend some money. The presence in the materials of the criminal case of documents confirming the costs of the victim is already the basis for compensation for the costs incurred by the suspect, the accused, but, of course, on a voluntary basis. We are not talking here about any penalties in favor of the victim, since this is the prerogative of the court when making the final decision on the case. It is only said that the task of the investigator, the interrogating officer in this case is to explain the essence of voluntary compensation for harm to the suspect, the accused as one of the grounds for mitigating liability or achieving reconciliation with the victim (including with the consequences in the form of termination of a criminal case or criminal prosecution in accordance with article 25 of the Criminal Procedure Code of the Russian Federation).
CONCLUSIONS

In conclusion, the authors substantiated the conclusion that in order to improve the procedure for compensation for the physical harm caused by the crime, Part 1 of Art. 44 of the Criminal Procedure Code of the Russian Federation must be stated as follows: “A civil plaintiff is a natural and legal person who has filed a claim for compensation for property and moral damage caused directly by a crime or socially dangerous act of an insane person, as well as compensation for the costs of burial, treatment of the victim, amounts paid to him as insurance compensation, benefits or pension, expenses incurred in connection with participation in the proceedings of the inquiry, preliminary investigation and in court, including the costs of representation”.

We also believe it is necessary to amend Art. 5 of the Criminal Procedure Code of the Russian Federation, including the concept of “physical harm”. In this connection, it is proposed to supplement the specified article with paragraph 58 of the following content: “Physical harm – injury or other damage to health caused directly by a crime or socially dangerous act, subject to compensation to the person who made a claim about it in the manner prescribed by this Code.”.

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Abstract

The article discusses topical issues related to compensation for physical harm caused by a crime, according to the legislation of the Russian Federation. Analysis of the provisions of the current criminal procedure law in Russia, as well as a number of neighboring countries (Belarus, Kazakhstan, Azerbaijan) allowed the authors to analyze the existing problems and propose rational ways to solve them. One of the main goals of the institution of compensation for harm caused by a crime, the authors consider the creation by competent officials of the preliminary investigation bodies of appropriate conditions for the restoration of social justice through compensation for the harm caused by the crime. The authors substantiated the conclusion that a claim for compensation for physical harm is most often declared through a claim method of protecting violated rights; it is logical to assert that the possibility of making such claims should be included in the content of the rights of a civil plaintiff as a participant in criminal proceedings.

Keywords: Personal health. Criminal proceedings. Reconciliation of the parties. Criminal procedural restitution.

Resumen

En el artículo se examinan cuestiones de actualidad relacionadas con la indemnización por daños físicos causados por un delito, de conformidad con la legislación de la Federación de Rusia. El análisis de las disposiciones de la actual ley de procedimiento penal en Rusia, así como en varios países vecinos (Belarús, Kazajstán, Azerbaiyán) permitió a los autores analizar los problemas existentes y proponer formas racionales de resolverlos. Uno de los principales objetivos de la institución de la indemnización por los daños causados por un delito, los autores consideran que los funcionarios competentes de los órganos de investigación preliminar crearon las condiciones adecuadas para el restablecimiento de la justicia social mediante la indemnización por los daños causados por el delito. Los autores corroboraron la conclusión de que una reclamación de indemnización por daños físicos se declara con mayor frecuencia mediante un método de reclamación para proteger los derechos violados; es lógico afirmar que la posibilidad de formular tales reclamaciones debe incluirse en el contenido de los derechos de un demandante civil como participante en un proceso penal.

Palabras-clave: Salud personal. Procesos penales. Reconciliación de las partes. Restitución procesal penal.