


# Problems of Compensation for Damage to the Victim of a Crime by Criminal Means

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**Keywords:** Damage, compensation for damage, victim, criminal law means, criminal law means of compensation for damage to the victim.

**Abstract:** The article deals with the problems of the implementation of the constitutional provision on compensation for damage to the victim of a crime by criminal law means. The purpose of the study is to review the criminal law provisions that can be used to compensate victims of crime and to develop scientifically based recommendations to improve their effectiveness. The objectives of the study are: to formulate criminal-law problems relating to the compensation of victims; to identify the nature and content of criminal-law means of reparation for victims; and to develop proposals for the improvement of criminal law with regard to the concerning the compensation of the victim by criminal law means. The methodological basis was the dialectical method of cognition, which made it possible to study the criminal law problems of compensation for damage to the victim. As a result of the study, the authors proposed to introduce a number of amendments to the Criminal Code of the Russian Federation aimed at increasing the efficiency of compensation for damage to the victim. The provisions and conclusions contained in the work can be used in the subsequent elaboration of the topic.

## 1 INTRODUCTION

Every year there are registered more than 2 million crimes in Russian Federation and more than 1.5 individuals and entities become victims of a crime.

The topic of compensation for damage to the victim is relevant all over the world. Foreign authors offer their ways of compensatory justice (Smith, Hayden P, 2016; Daigle, Leah & Guastafarro, Wendy & Azimi, Andia, 2016).

Data on the number of persons recognized as victims of crimes over the past five years are provided in the Table №1.


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Table 2: The Number of Victims by Year.

Years	2016	2017	2018	2019	2020
Number of victims	1 787 911	1 651 033	1 573 096	1 617 177	1 620 013
Out of them:					
Entities	243 673	233 659	237 930	247 365	243 260
Individuals	1 544 238	1 417 374	1 335 166	1 369 812	1 376 753

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Table 2: The Number of Victims by Year (cont.).

Years	2016	2017	2018	2019	2020
Number of reported crimes with victims	1 445 332	1 321 987	1 252 670	1 317 824	1 312 427
The number of registered crimes	2 160 063	2 058 476	1 991 532	2 024 337	2 044 221

As a result of committing a crime harm (damage) is caused, the amount of which is (thousand rubles): 2014 г. – 73,905.212, 2015 г. – 157,094.858, 2016 г. – 259,502.649, 2017 г. – 236,311.445, 2018 г. – 163,537.137, 2019 г. – 307,627.776, 2020 г. – 149,929.841.

The sum of compensation for damage in court cases amounted to (thousand rubles): 2014 г. – 26,815.647, 2015 г. – 57,037.880, 2016 г. – 31,042.666, 2017 г. – 32,453.027, 2018 г. – 45,224.324; 2019 г. – 39,291.529, 2020 г. – 55,138.431, which is not over 30% of caused harm (damage).

Compensation for damage to the victim is the prerogative, first of all, of the Civil Code of the Russian Federation (hereinafter – CC of RF) It contains the rules on compensation for damage (Articles 1082, 1064 etc. CC of RF).

Criminal procedural legislation is intended to protect the interests of victims, one of whose purposes is to protect the rights and legitimate interests of persons and organizations that have suffered crime (Code of Criminal Procedure, Article 6). For this reason, specialists in criminal procedure law (Bozhiev V.P., 1963; Kolzhin S.V., 2004; Kislénok S.L., 2010; Kokorev L.D., 1971; Kornelyuk O.V. 2003) are the ancestors of scientific research on the victim and compensation for damages. A large number of scientific publications (Davis, Robert & Johnson, Kalani & Lebron, Michael & Howley, Susan, 2020; Emily Gilbert (2017); Galghvin, Miranda & Louran) are devoted in foreign literature to reparations for the victim (compensatory justice) Thomas & Simpson, Sally & Cohen, Mark. (2018).

Criminal law, as is well known, defines the criminality and punishability of an act. The basic rules and institutions of criminal law are «connected» with the person who committed the crime. Over time, however, criminal law has come to realize that it must also guarantee not only the protection of the victim (Article 2 of the Criminal Code), but also compensation for the injury caused to him.

Interest in the victim in criminal law began to take shape in the 1970s (Dagel, P.S., 1974; Krasikov A.N., 1976). Since then, much has been done: a different

definition of the victim from that of criminal procedure has been proposed, containing criminal law elements, and the specific characteristics of the recognition of the victim in the event of injury or threat thereof are shown, Three different types of victims have been identified (Martynenko N.E., 2016).

However, modern development of crime legislation let us to state that the institution of compensation for damage to the victim is acquiring special significance today.

A large number of persons annually recognized as victims, the need to implement the constitutional provision on compensation to the victim for damage caused (Article 52 of the Constitution of the Russian Federation), polemics around the problems associated with the use of criminal law measures that can compensate the victim, determine the relevance of the topic.

## 2 MATERIALS AND METHODS

The publication is based on the dialectical method of cognition, which made it possible to consider in detail and objectively the issues of compensation for damage to the victim using the norms of the criminal law.

The logical-legal method made it possible to propose new approaches to compensation for damage to the victim. The system analysis made it possible to propose the concept of "criminal legal means of compensation for damage to the victim." The synthesis provided an opportunity to provide evidence of the need to increase the effectiveness of criminal law remedies for damages to the victim.

## 3 RESULTS AND DISCUSSION

As a result of the commission of a crime, the victim is always harmed. In order to stimulate persons who committed a crime to compensate for this damage, the legislator made a "compromise" with the person who committed the crime and provided in the Criminal Code of the Russian Federation norms that can be applied only in case of compensation for damage to the victim. These norms can be called compensatory.

The inclusion of an increasing number of compensation norms in the Criminal Code of the Russian Federation has a dual purpose. On the one hand, they protect the legitimate interests of the victim, as they contribute to the earliest possible

compensation for damage. On the other hand, they allow realizing the principle of humanism enshrined in Art. 7 of the Criminal Code of the Russian Federation and minimize criminal and legal repression against the person who committed a crime.

Compensation norms include: clause "k" Art.61, Art. 74, 75, 76, 761, 762, 79, 80, 86, 90, 1043 of the Criminal Code of the Russian Federation. That is, these are the norms, the condition for the application of which is the compensation for damage to the victim.

The appearance of an increasing number of compensatory in Criminal Code of RF, posed a bunch of problems, which should be solved.

First. It should be established how much the victim should be compensated by the person who committed the crime. The norms of the Criminal Code of the Russian Federation solve this problem ambiguously. In some cases, the articles stipulate the provision on compensation for damage or other mitigation of harm caused by a crime without specifying the share of compensation (Articles 75, 76, 762, 86, 90, 1041 of the Criminal Code of the Russian Federation), in others, it is said about partial or full compensation damage caused or otherwise ameliorating harm (Articles 79, 80 of the Criminal Code of the Russian Federation). In Art. 711 of the Criminal Code of the Russian Federation contains a provision not only on compensation for damage, but also on the transfer to the federal budget of monetary compensation in the amount of twice the amount of damage caused. The study of court sentences showed that there is no unified approach to the amount of compensation for damage as a condition for the application of compensation norms. In some cases, the victim is compensated for the damage in full, in others - from ten to twenty percent of what was caused, but in the first and second cases, various types of exemption from criminal liability are applied to the person who committed the crime. So, for example, compensation in the amount of 53,000 rubles, while the damage was caused in the amount of 196,233, was recognized by the court's appellate ruling as a mitigating punishment as a circumstance and entailed a reduction in the sentence imposed .

The appeal decision of the Volgograd Regional Court of July 5, 2017 changed the verdict of the Danilovsky District Court of the Volgograd Region of July 5, 2017, by which E.I. convicted of a crime under Part 3 of Article 264 of the Criminal Code of the Russian Federation. The appellate court indicated that after the sentencing, the convicted person partially compensated the moral damage caused to the victim. In accordance with clause "k", part 1 of article

61 of the Criminal Code of the Russian Federation, partial compensation for non-pecuniary damage, the appellate court recognized a mitigating circumstance and mitigated the imposed punishment .

The results of the survey of the victims showed that about 90% of them believe that compensation for damage should be complete and only in this case the principle of humanism should be implemented in relation to the person who committed the crime and compensation norms can be applied to him.

Full or partial compensation is provided not only in the Criminal Code of the Russian Federation, but also in the criminal laws of the CIS member states and in the legislation of European countries (Jennifer Alvidrez, Martha Shumway, Alicia Boccellari, Jon Dean Green, Vanessa Kelly, Gregory Merrill, 2008). In some cases, for the application of compensatory norms of application, full compensation for harm (damage) caused as a result of the commission of a crime is necessary (for example, Article 59.1.13 of the Criminal Code of Azerbaijan, Article 733 of the Criminal Code of Kazakhstan, Article 74 of the Criminal Code of Kyrgyzstan, Article 90, 91 of the Criminal Code of Moldova, Art.184 of the Criminal Code of Uzbekistan). In others, it is possible to partially compensate for the damage (for example, Art. 59.1.14 of the Criminal Code of Azerbaijan), in others, it is necessary to compensate at least half of the amount of damage caused (Art. 88 of the Criminal Code of Kyrgyzstan).

It seems that the establishment in the Criminal Code of the Russian Federation and in the criminal laws of the CIS member states of different rules for compensation for damage is associated with the European Convention on the Compensation of Victims of Violent Crimes, in Article 5 of which the provision is fixed that "for all or part of the damage, the upper limit, above which, and the lower limit, below which the damage will not be compensated ". The above provision of the Convention does not make it possible to enshrine in the Criminal Code of the Russian Federation a single rule for compensation for damage, for example, its full compensation as a condition for the application of compensation norms.

Second. The Criminal Law provides for the possibility of applying compensation norms only when a person is released from criminal liability and on parole from punishment. It seems that the list of compensatory articles can be expanded and applied when imposing punishment. This is where the legislative experience of the CIS member States can come in handy.

So, paragraph 1 of Article 55 of the Criminal Code of Kazakhstan provides that voluntary compensation

for property damage, smoothing over moral or other harm caused by a crime is one of the conditions for imposing a more lenient punishment than that provided for a committed criminal offense. In Art. 54 of the Criminal Code of Armenia enshrines the provision that compensation for damage to the victim is one of the grounds for imposing a punishment in the form of community service. According to Art. 481 of the Criminal Code of Uzbekistan, when imposing a punishment in the form of restriction of freedom, the court may impose on the convicted person the obligation to compensate the material and moral damage caused to him. Since similar norms are contained in the Criminal Code of the Russian Federation, it is possible to supplement them with a provision on compensation for damage to the victim.

Third. Compensation norms are contained only in the General part of the Criminal Code of the Russian Federation. The study of foreign experience in the legislative establishment of compensation norms shows that in some criminal laws of the CIS member States, they are also provided for in the Special Part. Usually, the compensation rate is contained in a note to a chapter or article of the Special Part of the Criminal Code. Such a note allows a person who has committed a particular crime to be exempted from criminal liability (by analogy with the existing notes, for example, to Article 126 of the Criminal Code of the Russian Federation, only containing a claim for damages).

So in paragraph 5 of the note to chapter 24 "Crimes against property" of the Criminal Code of Belarus it is said that the person who committed the crime listed in this note (theft, fraud and a number of others, committed without aggravating circumstances) fully compensated the damage caused, is exempted from criminal liability.

Articles 1851 "Infringement of copyright and related rights" and 1852 "Infringement of rights to industrial property objects" of the Criminal Code of Moldova provide for the possibility of releasing the person who committed this crime from criminal liability if he compensated for the material damage caused or otherwise compensated for the crime caused harm.

Fourth. Article 208 of the Criminal Procedure Code of the Russian Federation (hereinafter referred to as the Code of Criminal Procedure of the Russian Federation) provides for the grounds, procedure and terms for the suspension of the preliminary investigation (clauses 1-4, part 1). According to official statistics, about a million criminal cases are suspended annually and, as a result, victims do not receive compensation for the damage caused. So, in

2016, 987,482 (45.7% of registered) were suspended, in 2017 - 889,681 (43.2% of registered), in 2018 - 862,844 (43.3% of registered), in 2019 - 917 476 (47.7% of registered), in 2020 - 965 747 (47.2% of registered), respectively . It seems that this situation needs to be changed. Moreover, the number of suspended criminal cases includes cases of grave and especially grave crimes, including those encroaching on a person.

The Criminal Code of the Republic of Belarus followed the path of introducing criminal compensation into the Criminal Code of the Russian Federation. Moreover, its payment does not release the person from the obligation to compensate for the damage caused by the crime and to pay the proceeds from crime. Compensation is paid to the deposit account of the body conducting the criminal procedure in the amount of fifty percent of the damage (harm) caused by the crime (Art. 86 of the Criminal Code).

The way out of this situation is seen in the ratification of the European Convention on the Compensation of Victims of Violent Crimes and the creation of a special fund for compensation for victims of crimes, to which the perpetrators must transfer certain amounts as a condition for the subsequent application of any type of exemption from criminal liability to them.

Recommendations for the establishment of foundations for victims of crime are contained in the Plan of Action for the Implementation of the Vienna Declaration on Crime and Justice: Responding to the Challenges of the Twenty First Century (2002) .

## 4 CONCLUSIONS

The main findings of the research:

1. The criminal-legal consequences of a committed crime should depend on the amount of compensation for damage to the victim. With full compensation for damage, the punishment should be less than with partial compensation.

2. The list of criminal law norms containing provisions on compensation for damage to the victim can be expanded by extending compensation norms to the provisions of the criminal law on: types of punishment (this list may include the following articles: 46 "Fine", 49 "Compulsory work", 50 "Correctional labor"; sentencing (Article 64 "Imposition of a lighter punishment than provided for this crime).

3. Compensation norms can be contained not only in the General, but also in the Special part of the

Criminal Code of the Russian Federation. To do this, it is necessary to include in chapter 21 "Crimes against property, a note that reads: persons guilty of crimes under chapter 21 can be exempted by the court from punishment if they have returned what they received or fully reimbursed its value. The note does not apply to particularly serious crimes".

4. If the person who committed the crime is not found or cannot compensate for the harm caused, the state should assume this responsibility by creating a special fund for assistance to victims of the crime.

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