

Providing Compensation for Harm Caused by Crime as a Task of Criminal Intelligence and Surveillance Operations in Correction Facilities

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Abstract: Compensation for harm caused by a crime is important in the protection of human rights. This constitutional obligation of the state is to a certain extent ensured by the current legislation, including criminal and criminal intelligence and surveillance legislation. The norms contained therein create the legal basis for implementation of the corresponding constitutional norm. However, the practical execution of claims when the convicted persons serving their sentences evidences its low level. The analysis of the criminal intelligence and surveillance legislation allows to assert about the unused reserves. The thing, among others, is about setting a task for the criminal intelligence and surveillance operations in the correction facilities to assist in compensation for the harm caused by the convicted persons as a result of the crime. The objective of the research was to consider the process of providing compensation for harm caused by crimes as the task of the criminal intelligence and surveillance operations in the execution of sentences in the form of imprisonment. The following tasks can be set: identifying the reasons and conditions for a low level of compensation for harm by the convicted persons while serving their sentences, analyzing the current criminal and criminal intelligence and surveillance legislation, as well as foreign legislation in this area, developing specific practical recommendations and proposals. The research methodology was based on: general scientific methods, as well as statistical method, method of comparative jurisprudence. Based on the research results, there were developed the proposals that make it possible to carry out compensation for harm in the conditions of serving the sentence by the convicted persons in the form of imprisonment on a systematic basis.


1 INTRODUCTION

One of the significant norms aimed at protecting the rights and freedoms of citizens is the constitutional right of victims of crimes to compensation for the damage caused (Art. 52 of the Constitution of the Russian Federation). The importance of this disposition could be hardly overestimated. Even Caesar Beccaria emphasized the importance of harm as a true measure of crime (Beccaria C., 1939).

Not resolving the issue of compensation for harm creates among citizens the disbelief in law, in the inability to qualitatively protect their rights, freedoms and legitimate interests, which has an ambiguous effect on the legal consciousness, determining any of its transformations (Frolov A.N., 2018).

Unfortunately, theory and practice do not always take into account the rights and legitimate interests of the property owner, as L.V. Vedernikova notes (Vedernikova L.V., 2016). Ignoring the rights and legitimate interests of the victim also takes place at the conceptual level. Characterizing a new version of the 2020 Penitentiary System Development Concept, V. I. Seliverstov notes the addition of a new section “Ensuring the rights and legitimate interests of convicted persons and persons in custody” as positive (Seliverstov V.I., 2016). At the same time, the rights and legitimate interests of the victim of a crime and their reflection in this concept are neglected.

The analysis of the practice of compensation for harm by convicted persons shows its low level. This especially relates to the stage of execution of punishment in the form of imprisonment. If at the pre-

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litigation stage the specific weight of the compensated damage is about 30% (information of the Main Informational Analytical Center of the Ministry of Internal Affairs of Russia: the criminal situation for January-December 2019), at the stage of serving the sentence, the convicted persons compensate the claims amounts within 2.86% annually (Report of the Federal Penitentiary Service of Russia for 2020. Form 1. Section 8). In fact, a little more than half of the convicted persons fulfill the claims (Grishko A.Ya., 2017).

Considering the significant role of the criminal enforcement institutions in the compensation for harm by convicted persons, motivating them to work (Mirusin N. S., 2017), it can be concluded about necessary study of the reasons and conditions for the low level of compensation for harm by convicted persons while serving their sentence.

2 MATERIALS AND METHODS

For the purposes of the problem under consideration, the author studied the statistical indicators of the Ministry of Internal Affairs of Russia and the Federal Penitentiary Service of Russia that characterize the state of affairs in the field of compensation for harm caused by crimes by persons serving their sentence in the form of imprisonment. The materials for the study of this issue were also the works of the authors dealing with this topic (Vorobyev S.M., Grunin A. G., 2020; Rummyantsev N.V., 2018; Sucheyskaya Yu. A., 2020; Graf R.V., 2020; Bulatov B.B., Dezhnev A.A., 2019), the results of its discussion at scientific forums (International Interdepartmental Scientific and Practical Round Table “Causes of economic crime: identification, training, counteraction” dedicated to the discussion of the textbook of Professor Matskevich Igor Mikhailovich “Causes of Economic Crime”, 2017).

In addition to the statistical analysis of the theory and practice of compensation for harm caused by crime, of the national legislation in this area (criminal enforcement, criminal intelligence and surveillance), the method of comparative jurisprudence was used. The criminal legislation of the Republic of Kazakhstan is given as a positive example.

3 RESULTS AND DISCUSSION

The analysis of the reasons and conditions for the low level of compensation for harm by convicted persons

allows us to conclude that they are primarily due to insufficient legal regulation of this issue. An attempt to solve them at the sub-legal level bears no results. Thus, for example, the obligations imposed on the correction facilities to take measures for employment of the convicted debtor“ in accordance with the requirements of the Criminal Enforcement Code of the Russian Federation” as set out in Agreement of the Federal Bailiff Service of Russia and the Federal Penitentiary Service of Russia No. 0001/43/01-81180 dated November 25, 2015 “On interaction of the Federal Bailiff Service of Russia and the Federal Penitentiary Service” (cl. 2.2.1) in no way match the norms of the mentioned Code. The norms governing the issues of involvement of the convicted persons in the work (Art. 103 of the CEC of the RF), educational work with the convicted persons (Art. 109 of the CEC of the RF) do not point out the presence of claims of the convicted person as mandatory for solving them.

This fully applies to criminal intelligence and surveillance operations. The list of the criminal intelligence and surveillance operations in the correction facilities does not prolong the tasks of such operations arising from Federal Law No. 144-FZ “On criminal intelligence and surveillance operations” dated August 12, 1995. This law provides for identification of the property subject to confiscation among the tasks of the criminal intelligence and surveillance operations (Art. 2). The similar task is included in the criminal intelligence and surveillance operations in the correction facilities (Art. 84 of the CEC of the RF). It is supposed that the imposition of such obligation for the criminal intelligence and surveillance operations in the correction facilities is possible even within the framework of the current criminal and criminal enforcement legislation.

This task could be solved by identifying the convicted persons who hid property subject to confiscation (for example, by its artificial transfer to the ownership of another person, etc.). This information could be brought to the attention of the bailiffs and other servants of the correction facility, primarily to the chiefs of detachments. The latter could use such information provided that the issue of termination of illegal transactions is resolved when the legal status of the convicted person changes (release on parole, replacement of punishment with another more lenient punishment, etc.). The implementation of this proposal could be one of the constituent norms of the chapter regulating criminal intelligence and surveillance operations in the correction facilities offered by N.P. Gnezdova (Gnezdova N.P., 2018).

The role, significance, activity of the criminal intelligence and surveillance operations are in many aspects determined not only by the quality of legislation in this area, but also by other legislation, and, first of all, by criminal, criminal procedural, and criminal enforcement legislation.

Thus, the criminal legislation provides for positive liability for the crime that has caused harm to the victim (exemption from criminal liability with damage compensation - Art. 761, 1041 of the CC of the RF; referring to the circumstances commuting the punishment, voluntary compensation for property damage and moral harm - cl. "k", P. 1, Art. 61, of the CC of the RF, release on parole from further serving the sentence with compensation for harm - P. 1, Art. 79 of the CC of the RF, replacement of punishment with another more lenient punishment under the same conditions - P. 1, Art. 80, of the CC of the RF, etc.). The criminal procedural legislation sets forth the criminal law and civil law procedure for compensation for harm (P. 2, Art. 309 CPC of the RF). The criminal enforcement legislation assessed the acts of the convicted person on compensation for harm as positive (P. 3, Art. 175 of the CEC of the RF).

The above evidences considerable changes the executor applied to the sentence. This cannot but find its reflection in scientific views. "The modern scientific knowledge about the essence of punishment in the 21st century is largely reduced to the study of its restorative, punitive, corrective, educational and preventive functions," A.V. Shidlovsky writes (Shidlovsky A.V., 2020).

4 CONCLUSIONS

The law-maker does not determine the claim fulfillment by the convicted persons as a priority task for the correction facilities.

The norms established by these laws do not provide the most favoured treatment of compensation for harm caused by crime. This includes, among others, the criminal intelligence and surveillance operations. In the author's opinion, one of the fundamental areas in improvement of the criminal intelligence and surveillance operations on identification of the convicted persons who have hidden their property from confiscation, along with this task set out in Art. 84 of the Criminal Code of the Russian Federation, may be a change in Art. 315 of the Criminal Code of the Russian Federation that provides for liability for failure to comply with a court decision. In the current version, the subject of crime cannot be a convicted person, like any natural person.

It can be a special subject only: a government official, a civil servant, an employee of a state or municipal institution, a commercial or other organization.

In this case, the legislative practice of the Republic of Kazakhstan is noteworthy. The criminal law of this country, in contrast to Russia, establishes liability for the similar crime of a natural person (P. 1, Art. 430 of the CC of the RF). Failure to comply with a sentence, decision or other judicial act or an enforcement document executed using one's official position is attributed to a qualified criterion, and in case of committing the acts the amount of the penalty for which exceeds ten thousand monthly calculation indices, or obstruction of their execution - to a particularly qualifying criterion (P. 3 Art. 430 of the CC of the RF). The initiation of a criminal case according to the mentioned article creates conditions for implementation of the criminal intelligence and surveillance operations, including in relation to persons serving sentences. Revision of Art. 315 of the Criminal Code of the Russian Federation in the context of Art. 430 of the Criminal Code of the Republic of Kazakhstan will undoubtedly intensify the criminal intelligence and surveillance operations in the correction facilities in the study area.

The Japanese legislation cannot fail to attract attention in this regard (Smirnova I.G., 2020). The Criminal Code of this state contains a norm that establishes the direct liability for avoiding compensation for harm. According to Art. 96-11 of the Criminal Code of Japan, the persons who hid, destroyed, falsely alienated their property, burdened it with non-existent debts in order to evade the forced seizure, shall be punished with imprisonment with forced physical labor up to two years or a fine of up to five thousand yen.

The retrospective analysis of the criminal enforcement legislation allows us differently to treat Art. 67 of the CEC of the RF contained in the CEC of the RF until 2003. According to this article, the court could issue a ruling on the foreclosure of the property undetected during confiscation. It is supposed that the specified norm should be restored in the specified law. This could strengthen a systematic approach to the issue of compensation for harm by the convicted persons. The author shares the position of T.I. Belyukova regarding the establishment of the obligation for the convicted person to compensate for harm (Belyukova T.I., 2017). Such obligation must be among the main obligations of the convicted persons as provided by Art. 11 of the CEC of the RF.

The legislative task setting for the criminal intelligence and surveillance operations in the correction facilities concerning identifying the

property hidden from confiscation, along with the task setting for the criminal enforcement legislation (P. 2, Art. 1 of the CEC of the RF) in the form of compensation for harm caused to the victim as a result of the crime committed by including it in the correction (P. 1, Art. 9, of the CEC of the RF), taking into account the existence of claims when involving the convicted persons in the work (P. 1, Art. 103, of the CEC of the RF), determining compensation for harm as one of the areas of educational work with the convicted persons (P. 1, Art. 109, of the CEC of the RF), will make it possible to compensate for harm in the conditions of serving the sentence by the convicted persons in the form of imprisonment on a systematic basis. Separating this issue as an independent chapter of the Criminal Executive Code of the Russian Federation is also not excluded.

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