

## Genesis of the institute for the compensation of detriment caused by crime

## Génesis del instituto de indemnización del perjuicio causado por el delito

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## Summary

The authors analyze the historical prerequisites for the consolidation of legal provisions governing the conceptual foundations of the legal institution of compensation for detriment caused by crime in Russian legislation. While positively assessing the current regulation of the issues of compensation for detriment caused by crime in the current Criminal Procedure Code of the Russian Federation (hereinafter referred to as the Criminal Procedure Code of the Russian Federation), the authors propose to supplement the norms of the criminal procedure law with the concept of “detriment caused by crime”. In conclusion, the authors formulated the elemental composition of the legal institution of compensation for detriment caused by crime, which includes the object, subjects, procedural order of compensation for detriment, procedural and judicial control, as well as prosecutor's supervision over the activities of the head of the investigative body, head of the inquiry body, head of the inquiry unit, the investigator and the inquiry officer to ensure compensation for detriment caused by criminal offense.

**Keywords:** criminal proceedings, detriment caused by crime, material damage, victim, civil action.

## Resumen

Los autores analizan los prerequisites históricos para la consolidación de las disposiciones legales que rigen los fundamentos conceptuales de la institución jurídica de la indemnización por los perjuicios causados por el delito en la legislación rusa. Si bien valoran positivamente la regulación actual de las cuestiones de indemnización por delitos causados por perjuicio en el actual Código de Procedimiento Penal de la Federación de Rusia (en lo sucesivo, el Código de Procedimiento Penal de la Federación de Rusia), los autores proponen complementar las normas delictivas. derecho procesal con el concepto de “perjuicio causado por delito”. En conclusión, los autores formularon la composición elemental de la institución jurídica de la indemnización por el perjuicio causado por el delito, que incluye el objeto, sujetos, auto procesal de indemnización por perjuicio, control procesal y judicial, así como la fiscalización de la actuación del Ministerio Público. jefe del órgano de investigación, jefe del órgano de investigación, jefe de la unidad de investigación, el investigador y el oficial de investigación para garantizar una indemnización por los perjuicios causados por un delito.

**Palabras clave:** proceso penal, perjuicio causado por delito, daño material, víctima, acción civil.

## Introducción

The relevance of the topic under research is determined by the fact that the idea of compensation for detriment caused by crime (misconduct) at different times existed in various legal systems and religious cults. In particular, the laws of King Hammurabi (XVIII century BC) already contained provisions imposing on the perpetrator of the theft the obligation to pay the victim the material damage caused to him tenfold (Article 8 of the laws) (Batyr & Polikarpova, 2004, p. 10). The development of social relations currently leads to the emergence of new types of crime, their objects, means and methods of committing them (Pushkarev, Gaevoy, Skachko, Kolchurin & Lozovsky, 2019) and entails objective difficulties in solving the main task of criminal proceedings – compensation for detriment caused by crime (Pushkarev, Artemova, Ermakov, Alimamedov & Popenkov, 2020).

## Materials and Methods

The general scientific systemic method was used as the main method, through which the historical excursus of the formation and development of the institution of compensation for detriment caused by crime in the Russian criminal process was studied.

The systematic approach made it possible to look at the institution of compensation for detriment caused by crime as a broad, multidimensional, integral complex of interrelated elements, as well as to study their functional and structural connections.

In order to fully and accurately disclose the subject of the research, special legal methods were used: historical-legal, comparative-legal, formal-legal, analysis, synthesis, systemic, sociological (questioning, conversation, interviewing), etc.

The historical-legal method made it possible to consider the evolution of the institution of compensation for detriment caused by crime, as well as to form the elemental composition of this legal institution, taking into account the modern needs of science and practice.

The comparative-legal method allowed to formulate the most important condition for ensuring compensation for detriment caused by crime, which consists of reducing the time interval between the fact of causing detriment by criminal offense and its actual compensation.

Through the use of methods of analysis and synthesis, real information was obtained regarding the effectiveness of the institution of compensation for detriment caused by crime.

The sociological research method made it possible to obtain real results of empirical research, as well as to analyze, systematize and generalize them.

As a result of the application of this methodology, new knowledge was obtained about the connections and patterns of development of the institution of compensation for detriment caused by crime in Russian criminal proceedings, as well as trends and prospects for its further improvement.

## **Results Analysis**

It is known that even in such a large monument of the law of the Old Russian state as *Russkaia Pravda* (XII century), for almost all acts a person was subjected to physical punishment (cutting off of limbs, removal of organs of sight and hearing, death penalty, etc.) and at the same time paying a fine in monetary terms (*kuna*, *hryvnia*) (Sverdlov, 1988, p. 121). It should be noted that *Russkaia Pravda* did not know the line between criminal and civil substantive law. According to R.G. Khasanshina (2014), “This is due to the fact that property punishments prevail in Old Russian law, which are similar in form to compensation for detriment or coincided with it” (p. 24).

The first mentions of compensation for detriment (damage) in its legal sense are found in such major monuments of law of the period of feudal fragmentation as the Pskov Judgment Letter and the Novgorod Judgment Letter. In particular, article 67 literally spelled out the following right of the plaintiff to compensation for detriment caused by such a crime as robbery: “The plaintiff, having arrived with a bailiff, will repay that for his debt by force, he will not burden his plaintiff, otherwise he will be at the robbery, but the robbery will be judged ruble...” (Chistyakov, 1999, p. 47).

From the context of this provision, it is already clear that the rights of the plaintiff, as a person who suffered certain damage, are respected in connection with a crime committed against him to compensate for harm, including in monetary terms.

A more specific definition of losses and detriment caused by crime is described in the Code of Penalties of Criminal and Correctional Services of 1845. In this source, one can find in chapter two a whole section entitled “Section Two” devoted to compensation for detriment – “On compensation for losses, detriment and offense”, which includes five articles (Articles 62-66). For example, Art. 62 clearly states that “those guilty of a crime that caused someone loss, detriment

or offense ... are obliged to compensate for this detriment, loss or insult from their own property by the exact order of the court” (Chistyakov, 1999, p. 336).

Moreover, it should be specially noted here that an obvious progress in the legal understanding is the fact that there is a prescription in paragraph 9 of Article 140 of the Code of Law that the circumstances reducing the guilt and severity of punishment were compensation for damages and amending the detriment caused by crime (Chistyakov, 1999, p. 351).

The concept of detriment, as a category, selfishly negative, implying activities damaging the individual and various types of social relations in general, was formed at the beginning of the 19<sup>th</sup> century.

Developing the conceptual apparatus of detriment caused by crime, VI. Sluchevskii gave more concrete examples, referring to the judicial practice of pre-revolutionary Russia, when “the Senate for theft cases recognized the head of the station for the victim, who was entrusted with the control of the stolen property” (71/1841). He recognized as a victim not only the owner of the thing that constituted the object of the crime, but also the actual owner of this thing, as well as the person obliged to protect the rights of literary property in cases of violation of it (78/63) (Sluchevsky, 1910, p. 134).

The possibility of compensation for detriment in the framework of criminal proceedings already at the beginning of the 19<sup>th</sup> century was also expressed by S.V. Pozdnishev (1913), arguing that “a civil plaintiff in a criminal court may be a person who has suffered known detriment from a crime” (p. 98).

Subsequently, many scientists (Grinenko, 2006, p. 121-123; Gureev, 1961, p. 76-78; Mazalov, 1977, p. 35-39; Tchelstov, 1945, p. 45-48) spoke positively about the possibility of admission in criminal proceedings to resolve issues of compensation for detriment caused by crime, by supplying victims the person of a civil claim.

The possibility of joint consideration of a civil claim and a criminal case, established by law, based on the justified conviction of V.P. Bozhiev, creates a number of advantages:

[...] accelerates the process of restoration of property rights violated by crime; promotes a more complete and quicker identification of persons who are obliged to bear civil liability for its infliction; creates an optimal procedural regime for the court and the parties; saves procedural forces and means; exempts civil plaintiffs from paying the state half (Bozhiev, 1989, p. 491-492).

Drawing a parallel between the operation of the norms of civil and criminal procedural law in the sphere of regulation of the procedure for compensation for detriment A.A. Vlasov also convincingly asserts that

[...] there are no prohibitions on the application of civil law norms in criminal proceedings. The current institution of compensation for material damage and moral detriment in criminal proceedings for the most part repeats the rules for considering a claim in civil proceedings, with the exception of the distribution of the burden of proving claims – in the first case on the investigator conducting the investigation of the criminal case, and in the second – on the plaintiff himself (Vlasov, 2000, p. 40).

The fact that the classical form of compensation for property damage in criminal proceedings is a civil claim is discussed even today by O.N. Lavrova (2015), arguing that this form is fully consistent with the constitutional rule on the right of every citizen to defend their rights and interests by all legally permitted means.

E.V. Smirnova (2014b), pointing out that a civil claim in criminal proceedings is one of the ways to compensate for detriment caused by a crime, reinforces his position by referring to the opinion of S.A. Sinenko (2014, p. 121), criticizing the legislator for refusing to create a general rule concerning, in general, compensation for detriment caused by crime.

In turn, these opinions that the mechanism of compensation for detriment caused by crime should definitely develop precisely through filing a civil claim and find its full application in the framework of pre-trial proceedings in criminal cases need to be clarified on the following two procedural points regarding the expressed opinions of these scientists.

Firstly, here we should talk not only about the criminal court, but also the possibility of claiming compensation for detriment to victims already at the stages of pre-trial proceedings (voluntary compensation to suspects, accused, or compulsory compensation through the procedural activities of the investigator and interrogator to compensate for detriment caused by crime).

Secondly, the concept of “known detriment” should also be clarified, since at the time of filing a civil claim, neither the type of detriment, nor its size may be accurately established.

At the same time, filing a civil claim is only the initial stage when a civil plaintiff appears, because this does not cause automatic compensation for detriment, since its real compensation requires the production of a number of procedural actions and the adoption of a number of procedural decisions (both in pre-trial proceedings and in court proceedings).

It should also be borne in mind that the harm caused to the victim as a result of the crime committed must be the result of illegal actions (inaction) of a specific suspect (accused), in this regard, it is necessary to consider the features of the causal relationship between these actions and the resulting consequences in the form of a specific type and size detriment.

Nowadays, I.S. Barinov and E.Y. Antonova (2015) argue that “within the framework of the general problem of protecting the victim from crime, compensation for detriment (damage), as well as the nature of such compensation, must be assigned one of the main roles” (p. 130-131).

However, it should also be said that such clear guarantees for the protection of the rights and interests of subjects of various legal relations in the implementation of the mechanism of compensation for detriment caused by a crime have not always existed in the history of the Russian state.

The interpretative meaning of such concepts as “detriment” and “civil action” is presented in the classical Russian sources. In V. Dahl's dictionary, the term “detriment” means to damage, cause harm, damage to health, personal injury, loss of property; to do harm... Here, it is said that the plaintiff “is a man or a woman who is seeking their rights by the court, the petitioner, the petitioner, the opposite is the defendant (Dal, 1938, p. 387).

Similarly, it is indicated in the dictionary of S.I. Ozhegov that the term “detriment” means “damage, harm to health, harm...”. At the same time, “claim” here is understood as “an application to the court or arbitration for the resolution of any civil dispute. Submit a claim. Withdraw the claim. Monetary claim. Counterclaim” (Ozhegov, 1991, p. 297).

It is impossible to talk about compensation for detriment caused a crime without indicating at the same time such a participant in criminal proceedings as the victim. It should be said that the term “victim” first appeared in the Charter of Criminal Procedure of November 24, 1864. However, the specific wording of “the victim of a crime” was absent in the CCP. However, as a result of the study of the provisions of the Charter, the following definition of a victim can be

proposed: “A victim is a person who has suffered detriment and loss by a crime”. Moreover, under “detriment and loss” the law meant losses that were the direct consequence of the crime itself.

After the October Revolution of 1917, when the state system changed in Russia, the first legislative act regulating the institution of protecting the rights of the victim was the Criminal Procedure Code of the RSFSR, adopted in 1922. It was in force until the adoption of the Code of Criminal Procedure of the RSFSR in 1960. However, as in the CCP of 1864, the 1922 Code of Criminal Procedure of the RSFSR also did not provide a specific definition of the victim of a crime. Only in the article-by-article commentary to Art. 14 of the Code of Criminal Procedure of the RSFSR of 1922 was given a definition of the victim, according to which “the victim is a person against whom the crime is directed, or whose right has been violated by the crime”. So, the victim was considered “a person (natural or legal) who suffered from criminal acts” (Pushkarev *et al.*, 2019, p. 2563).

For the first time, the definition of the victim in the source of law was formulated in Art. 24 of the Fundamentals of Criminal Procedure of the USSR and the Union Republics of 1958 and reproduced in Art. 53 of the Code of Criminal Procedure of the RSFSR 1960. So, according to Art. 53 of the Code of Criminal Procedure of the RSFSR, the victim was recognized as the person to whom moral, physical or property damage was caused by a crime.

At the same time, during the period of development of socialism and the prosperity of Bolshevism, oddly enough, the activities of state authorities in general and preliminary investigation bodies in particular, to compensate for the harm caused to crimes, receded into the background. The tasks of the Soviet criminal process for many decades, starting from the 20s of the 19<sup>th</sup> century, and up to the adoption of the current Criminal Procedure Code of the Russian Federation, did not include provisions regulating the resolution of issues of compensation for detriment caused by criminal acts.

Still, the issues of compensation for detriment caused by a criminally punishable act in the Soviet period were solved very effectively, but, as it turns out, only due to the repressive nature of criminal legislation, and not criminal procedural science (Smirnova, 2014a).

These tasks were being solved through the large-scale use of the labor of convicts, regulated by the Correctional Labor Code of the RSFSR of 1924 and the sequence of payments established by the norms of the Civil Procedure Code of the RSFSR of 1923.

The legislator transferred a similar position to the Code of Criminal Procedure of the RSFSR in 1960, which developed as the whole science of Soviet criminal procedure on the basis of the Marxist-Leninist doctrine of state and law (Borodin, 1970, p. 19).

It can be stated that the issues of compensation for detriment in this doctrine did not play any significant role at all. The authors an indirect mention of the fact that the detriment caused by crime should have been compensated only in the insignificant comments of the scientists-proceduralists of those years. For example, I.M. Gutkin (1970) argued that “the procedural function of the victim has the character of an accusation. Its activities are aimed at exposing and punishing the person who committed the crime” (p. 74). Also indirectly, Article 20 of the Criminal Procedure Code of the RSFSR in its broad sense testified that these issues should be resolved, while summarizing the following: “the circumstances of the case in the Soviet criminal process should be investigated comprehensively, fully and objectively”.

Once again, the analysis of the content of these norms and concepts indicates a clear removal of the function of public authorities, including those represented by the bodies of preliminary investigation, to create a mechanism and implement its tools to compensate for detriment caused by a crime.

Certain attempts by the legislator to direct the efforts of the state to address the issues of compensation for detriment were observed in the early 90s of the 20<sup>th</sup> century. On December 24, 1990, the Federal Law “On Property in the RSFSR” was adopted, the provisions of which, namely at the legislative level, fixed the resolution of issues of compensation for detriment caused by a crime if it was impossible to recover funds from the guilty person.

It should be noted in a positive light that in a completely different vector the issues of compensation for detriment caused by crime are resolved in the current criminal procedural legislation, which is intended to be facilitated by a very significant contribution of Russian criminal procedural science.

Assessing the positively acting norms of the Code of Criminal Procedure of the Russian Federation, the authors, at the same time, note that the introduction of the concept of “detriment caused by crime” into the criminal procedural legislation will allow solving a significant layer of problems associated with increasing the effectiveness of the institution of compensation for detriment caused by crime in Russian criminal proceedings.

Thus, the authors propose to consolidate in the current Criminal Procedure Code of the Russian Federation the following concept of detriment caused by a crime, under which negative consequences of a criminal offense are accepted, expressed in causing the victim to physical, property, moral detriment, subject to compensation at the claim of a civil plaintiff in the manner prescribed by this Code, or through civil proceedings.

## **Conclusion**

Based on the conducted historical excursion into the institution of compensation for detriment caused by criminally punishable acts, the authors have formed the elemental composition of this legal institution, which includes an object that presupposes a modern conceptual apparatus, as well as specific types of detriment caused by a crime, criteria for its delimitation and assessment; subjects of ensuring compensation for detriment at the stages of pre-trial proceedings (head of the investigative body, head of the inquest unit, investigator, interrogator); the procedural procedure for compensation for detriment, that is, mutually complementary procedural instruments that are used during the preliminary investigation by the appropriate actors (civil claim; criminal procedural restitution, provision of voluntary compensation for detriment); departmental and judicial control and prosecutorial supervision over the activities of the preliminary investigation bodies to ensure compensation for detriment caused by crime.

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## **Bibliographic references**

- Barinova, I. S. & Antonova, E. Yu. (2015). Victim of a crime in criminal legal relations. Bulletin of the Khabarovsk State Academy of Economics and Law, 2(76), 130-131.
- Batyr, K. I. & Polikarpova, E. V. (Eds.). (2004). Reader on the general history of state and law. Vol. 1. Moscow: Yurist.
- Borodin, S. V. (1970). Soviet science of criminal procedure. In B. A. Viktorov (Ed.), Criminal procedure (pp. 3-29). Moscow: Yurid. lit.
- Bozhiev, V. P. (1989). Civil suit in criminal procedure. In A. D. Boykova, I. I. Karpets (Eds.), Course of the Soviet criminal procedure: General part. Moscow: Yurid. lit.

- Cheltsov, M. A. (1945). *Civil lawsuit in criminal proceedings*. Moscow: Yurid. izd-vo.
- Chistyakov, O. I. (Ed.). (1999). *Domestic legislation of the XI-XIX centuries: a guide for seminars. Part I (XI-XIX) centuries*. Moscow: Yurist.
- Dal, V. (1938). *Explanatory dictionary. Vol. 3*. Moscow: Ripol Klassik.
- Grinenko, A. V. (2006). *Commentary on the Criminal Procedure Code of the Russian Federation (article by article)*. Moscow: Eksmo.
- Gureev, P. P. (1961). *Civil action in Soviet criminal proceedings*. Moscow: Gosyurizdat.
- Gutkin, I. M. (1970). *Participants of the Soviet criminal process*. In B. A. Viktorov (Ed.), *Criminal procedure* (pp. 49-79). Moscow: Yurid. lit.
- Hasanshina, R. G. (2014). *The essence and significance of compensation for harm to the victim in making procedural decisions in criminal cases (Diss. ... Cand. Jurid. Sciences)*. South Ural State University, Kazan.
- Lavrova, O. N. (2015). *Forms of realization of the right of citizens to compensation for property damage caused by a crime*. In *Problems of pre-trial proceedings according to the Criminal Procedure Code of the Russian Federation: Collection of articles based on the materials of the interdepartmental scientific-practical conference, April 23, 2014* (pp. 98-102). Ruza: Moscow Regional Branch of the Moscow University of the Ministry of Internal Affairs of Russia named after V. Ya. Kikotya.
- Mazalov, A. G. (1977). *Civil lawsuit in criminal proceedings*. Moscow: Yurid. lit.
- Ozhegov, S. I. (1991). *Dictionary of the Russian language*. Moscow: Rus. yaz.
- Pozdnyshchev, S. V. (1913). *Elementary textbook of Russian criminal procedure*. Moscow: G. A. Leman.
- Pushkarev, V. V., Artemova, V. V., Ermakov, S. V., Alimamedov, E. N. & Popenkov, A. V. (2020). *Criminal prosecution of persons, who committed criminal, acts using the cryptocurrency in the Russian Federation*. *Revista San Gregorio*, 42, 330-335.
- Pushkarev, V. V., Gaevoy, A., Skachko, A. V., Kolchurin, A. & Lozovsky, D. N. (2019). *Criminal prosecution and qualification of cybercrime in the digital economy*. *Journal of Advanced Research in Dynamical and Control Systems*, 11(8), 2563-2566.
- Sinenko, S. A. (2014). *Ensuring the rights and legitimate interests of the victim in criminal proceedings: theoretical, legislative and law enforcement problems (Diss. ... the Doctors of Law)*. Moscow University of the Ministry of Internal Affairs of the Russian Federation, Moscow.
- Sluchevsky, V. I. (1910). *Textbook of Russian criminal procedure. Judicial system-legal proceedings*. St. Petersburg: Tipografiya M. M. Stasyulevicha.
- Smirnova, E. V. (2014a). *Compensation for harm caused by a crime in criminal proceedings in Russia: history and modernity*. *Actual problems of Russian law*, 11, 2566-2570.



Smirnova, E. V. (2014b). Problems of compensation for harm caused by a crime in criminal proceedings in Russia. *Bulletin of the Volgograd Academy of the Ministry of Internal Affairs of Russia*, 4(31), 129-134.

Sverdlov, M. B. (1988). *From Russian law to Russian truth*. Moscow: Yurid. lit.

Vlasov, A. A. (2000). Compensation of harm to victims of crime. *Legality*, 2, 40-44.