

CRIME VICTIM COMPENSATION

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Abstract: this article aims to study international legal instruments that govern the compensation for crime victims in particular countries. In addition, the study aims to conduct a comparative analysis of different approaches to crime victims' compensation stipulated in the legislation of foreign countries. The obtained results help conclude that approaches to compensation should be improved to comply with modern requirements and compensation methods.

Keywords: criminal damage, crime victim, plaintiff, mediation, criminal restitution, legal recourse.

INTRODUCTION.

Complete compensation of criminal damage is one of the most crucial issues these days. The 22nd of February is the International Day for Victims of Crime. In 1990, Victim's Charter: Statement of the Rights of Victims of Crime was signed by the UK government. This document describes all the changes in the legislation and court practice that regard ensuring the safety and social aid for crime victims.

It is noteworthy that the United Nations pay significant attention to the issue of compensation for crime victims. Nevertheless, in terms of human rights and redress mechanisms, it seems logical to start reviewing international legal norms with the Universal Declaration of Human Rights that was adopted by the UN General Assembly at its third session on 10 December 1948.

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It was a crucial step forward since it stipulates the rights of the victims and not only the rights of the accused.

Overall, it can be stated that the international legal standards and the experience of foreign countries in compensating for crime victims fall under the following structure: “offender” – “victim” – “damage” – “compensation” – “punishment”. This means that the person committing a crime will be subject to a punishment which also depends on the compensation measures taken by the offender. This approach to proceedings ensures the inclusion of both retributive and restorative justice.

MATERIALS AND METHODS.

We used the comparative-legal method to analyze the international legal standards and foreign practices in the compensation for crime victims, formulate a crucial condition for ensuring compensation as well as reduce the time gap between the crime and compensation by creating a model of compensation mechanisms and legal guarantees. The aforementioned method helped the authors formulate an opinion on implementing certain compensation mechanisms in the Russian realia. As a

result, we obtained new insight into the correlation and patterns of the development of compensation for criminal damage as well as tendencies and perspectives for further improvement of actions of officials who perform the preliminary investigation to ensure the compensation for crime victims.

RESULTS ANALYSIS.

It seems crucial to adopt international practices in the Russian criminal proceedings since they are often ineffectively implemented [1, pp. 7950-7952], especially as it concerns new types of offenses [2, pp. 2563-2566].

The Anglo-American Law (constitutes the basis of the legal systems of England, Wales, Scotland, Northern Ireland) is unique due to its stable model for the activities of public authorities that aims to provide real help for crime victims [5, p. 121]. The settlement of claims on compensation for crime victims follows civil proceedings and tort law with the case law as main regulations [3, p. 95].

While reviewing legal acts of the U.K., we found out that, according to the Criminal Justice Act 1982 (Section 65), compensation can serve as the only

sanction, i.e. as the total punishment for a crime.

In the USA, there is an implemented program for victim compensation. Among the types of compensation, there are compensatory benefits uncommon for the Russian law such as unemployment benefit, public housing, phone calling, and other types of communication at the public expense [4, p. 57].

It seems important to mention that the legislation of the USA and the U.K. ensures full compensation financed with State funds for criminal acts against life and health. In other cases, compensation is financed with different insurance payments from various funds. Meanwhile, victims can submit petitions on what assets shall be used for compensation. The Russian researchers also voice their opinion on the necessity to create such funds [7, p. 61]. However, there seem to be no steps taken in this direction.

In the U.K., the Code of Practice for Victims of Crime provides the Criminal Injuries Compensation Scheme which stipulates the application for payment [6]. The Scheme contains information on the conditions and amount of payment according to a

particular case. In the U.K., the police and other law enforcement services use the Code which also stipulates the main regulations of working with victims.

In the USA, there are special law offices in the police stations that provide legal assistance for crime victims.

The Romano-Germanic Legal System also has a significant number of legal acts that function as a unified mechanism and govern compensation procedures.

In Germany, there are three most important laws on the defense of the rights of victims. For example, the Crime Victims Compensation Act was promulgated in 1976 in order to ensure public compensation for those who have been subjected to crime inside the country as well as for the victim's close relatives if they are economically dependent. The categories of persons who can apply for compensation are as follows: citizens of Germany, citizens of EU countries, and other foreign citizens who have lived in Germany for 3 years before the crime.

In terms of scientific relevance and practical implementation, it is crucial to mention mediation techniques that are largely used in Germany under the criminal code (§ 46a of Strafgesetzbuch,

“Mediation Between the Perpetrator and the Victim, Restitution for Harm Caused). It stipulates that the court may not impose punishment on the two following conditions: First, if the perpetrator in an effort to achieve mediation with the aggrieved party (mediation between perpetrator and victim), completely or substantially made restitution for his act or earnestly strived to make restitution; Second, if the perpetrator in a case in which the restitution for the harm caused required substantial personal accomplishments or personal sacrifice on his part, completely or substantially compensated the victim, then the court may mitigate the punishment or, if the maximum punishment which may be incurred is imprisonment for not more than one year or a fine of not more than three hundred sixty daily rates, dispense with punishment (§49, subsection 1) [9, p. 28].

In the former case, if the offender seeks to compensate the victim, he may make compromises with the victim himself or both parties may appeal to a third party – a mediator.

In Germany, there is a checklist for crime victims which stipulates the grounds, conditions, and procedures

necessary to seek reparation. Thus, victims who suffered from severe physical injury or trauma can file an application to the district authority (Landratsamt) to obtain compensation based on the Compensation Act for Victims of Violence (Gesetz über die Entschädigung für Opfer von Gewalttaten). In addition, the Compensation Act for Victims of Violence ensures assistance with medical, dental, and psychotherapeutic treatment; assistance with rehabilitation activities; pensions for victims or the deceased person’s relatives (widowers, widows, orphans, and parents).

The 1986 Victim Protection Act also includes the following types of compensation for crime victims: medical and dental treatment; monetary payments; health-resort treatment; assistance in housekeeping; sick pay; disability payment; up to 36€ daily payment in case of employment difficulties due to illness (or disability).

In France, the criminal procedure code prescribes the compensation procedures at the preliminary stage of criminal procedures. Compensation is regarded as restitution (Art. 41 of the French Code of Criminal Procedure). According to the Code, the victim has

had the opportunity to obtain compensation on behalf of the State before the offender stands trial. After that, the executive authorities that represent the State, in terms of recourse proceedings, impose on the convicted to pay all expenses that have been previously paid to the victim [8, p. 237].

There are other legislative practices employed in other countries that are important to mention.

For instance, the legislation of Japan includes regulations that protect property rights of victims that stipulate criminal liability for evading the payment of compensation. Particularly, if the person has concealed, destroyed, feigned alienation or incurred false debt to evade enforcement, the court may prosecute the stated person (Art. 96 of the Criminal Procedure Code of Japan).

According to the criminal law of Argentina, the obligation to compensate is preferable to all those the responsible party is accountable for after committing the crime and is one of the aims of crime prevention (Art. 30 of the Penal Code of Argentina). There is a similar norm in Art. 36 of the Criminal Code of the Kingdom of Spain which stipulates the opportunity to withdraw the criminal

record after the accused has repaid the harm caused by the crime.

CONCLUSIONS.

Nowadays, we can make a distinction between two groups of countries: the first group provide compensation with the State funds or special funds, the second group impose payment on the accused. The majority of the developed countries (the U.K., the USA, Canada, France, Germany, Spain) developed and implemented the mechanisms of restorative justice that help compensate for the damage caused by the crime irrespective of the accused or his will to compensate for the damage. The main reason for this is the necessity to compensate for the damage either with the State funds and with insurance payments from special funds or through recourse proceedings.

REFERENCES:

- Pushkarev V. V. et al. Crimes in the Military-Industrial Complex (MIC) // International Journal of Recent Technology and Engineering. - Volume-8 Issue-3, September 2019. - P. 7950-7952.
- Pushkarev V. V. et al. Criminal Prosecution and Qualification of

Cybercrime in the Digital Economy // Journal of Advanced Research in Dynamical and Control Systems. - Volume-11 Issue-8. - 2019. - P. 2563-2566.

Varpakhovskaya E. M. Voprosy pravovogo regulirovaniya vozmeshcheniya vreda zhertvam prestupleniy v mezhdunarodno-pravovykh standartakh i zakonodatel'stve ot del'nykh gosudarstv // Sibirskiy yuridicheskiy Vestnik. - 2012. - № 3 (58). - P. 91-95.

Volynskaya O. V., Fedorov M. I. O dopustimosti korrektyrovki otechestvennogo zakonodatel'stva, reglamentiruyushchego status poterpevshego, pri ispol'zovanii norm mezhdunarodnogo prava // Vestnik ekonomicheskoy bezopasnosti. - 2016. - № 2. - P. 57-63.

Mitin M. A. Mezhdunarodno-pravovoye regulirovaniye kompensatsiy zhertvam ugolovnykh prestupleniy: Diss... kand. yurid. nauk. - Sankt-Peterburg. 2012. - 217 p.

National Code of Victim Rights (The Code of Practice for Victims of Crime) // [Electronic resource] www.homeoffice.gov.uk/documents/victims-code-of-practice.html (Date of access: 04.02.2020).

Pushkarev V. V. O zakonnom prave poterpevshego na vozmeshcheniye material'nogo ushcherba, prichinnogo prestupleniyem // Deyatel'nost' pravookhranitel'nykh organov po realizatsii norm mezhdunarodnogo prava i zashchite prav cheloveka: Materialy mezhdunar. nauch.-prakt. seminara / Redkol.: Anisimov P.V. (otv. red.) i dr. - Volgograd: VYUI MVD Rossii, 1998. - P. 60-62.

Comparative criminal law. Special part: Monograph / Dodonov V.N., Kapinus O.S., Shcherba S.P.; Under the total. and scientific. Ed. .: Shcherba S.P. - M.: Yurlitinform, 2010. - 544 p.

The Criminal Code of the Federal Republic of Germany // D.A. Shestakov. Series "Legislation of foreign countries." - St.-Petersburg, 2003. - P. 28