

## **Harm Caused by a Crime to a Legal Entity: Criminal Legal, Criminal Intelligence and Criminal Procedural Aspects of Comparative Legal Research**

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### **Abstract**

*The authors analyse the existing problems related to the determination of the extent and nature of harm caused by a crime to a legal entity in accordance with the legislation of Russia and Vietnam in theory and practice. According to the authors, the current legislation of Russia and Vietnam defines various methods, the use of which makes it possible to determine the characteristics of harm for a victim – a legal entity, such as: the investigative proceedings, the conduct of criminal intelligence measures, the examination of documentary records, audits, and other studies.*

*At the end of the research the authors formulated the conclusion that now there are difficulties in determining this type of harm as business reputation, as a result of this phenomenon the right of a victim for harm compensation is limited. Consequently, the further development of the system of legislation requires the creation of the most effective methods in order to quickly and expediently establish the nature and extent of non-property damage (including business reputation) caused by a crime to a legal entity.*

**Key-words:** Criminal Prosecution, Criminal Law, Criminal Intelligence Activity, Investigation of Crimes, Property Damage, Damage to Business Reputation, A Legal Entity, A Victim, Criminal Intelligence Measures.

## **1. Introduction**

Harm is one of the backbone categories that is at the centre of the basic concepts and institutions of criminal law. The essence of this socio-legal phenomenon is not always a subject of the detailed analysis and it is perceived as a priori understandable, undeniable statement by scientists [Shkabin G.S., 2016, p. 62]. The relevance of the research topic is determined by the fact that one of the essential interests of a legal entity – a victim of a crime, is the real and properly ensured compensation for harm caused by the crime, as well as the restoration of violated rights. At the same time, compensation for harm cannot be carried out without certain information about their nature and extent. Therefore, the activity, establishing the characteristics of harm for a victim – a legal entity in criminal proceedings, occupies an important place not only in theory, current legislation, but also in law enforcement practice.

## **2. Materials and Methods**

The methodological basis of the research was the general scientific systemic method of cognition, with the help of it the issues related to the determination of the extent and nature of harm caused to a legal entity by a crime were studied in the criminal process of Vietnam and Russia. The reliability of the research results is ensured through the use of various private scientific methods of cognition. The systematic approach allows us to comprehensively consider the totality of methods, the implementation of which contributes to the establishment of the nature and extent of harm caused to a legal entity. The comparative legal method made it possible to identify the difference between the criminal procedural laws of Russia and Vietnam within the framework of study. The methods of analysis and synthesis were used in the study of practical law enforcement to establish the nature and extent of harm in Russia and Vietnam. The sociological method yielded results of an empirical nature, helped analyse, systematize and generalize them. Thus, the application of these methods made it possible to obtain new knowledge regarding the procedure and methods for establishing the nature and extent of harm to a legal entity as a result of crime commission.

## **3. Results and Discussion**

The category “harm” is not only mentioned directly in the criminal legislation, but also underlies many criminal legal concepts and definitions used in the theory of criminal law. This indicator of social danger is often applied in domestic legislation in the modern period. Up to date, in

the General and Special Parts of the Criminal Code of the Russian Federation, this word is used more than 130 times in 93 articles (39 times in 21 articles of the General Part and 94 times in 72 articles of the Special Part) [Shkabin G.S., 2016, p. 64]. Compensation of harm to victims of criminal acts, according to a number of scientists (Ivanov D.A., Esina A.S., Fadeev P.V., Chasovnikova O.G., Zorina E.A.) is one of the prerequisites for the restoration of rights and the triumph of justice [Ivanov D.A., Esina A.S., Fadeev P.V., Chasovnikova O.G., Zorina E.A., 2020, p. 754].

The institution of harm compensation for victims, as noted by N.V. Tien, is cross-sectoral and it contains various norms of law (criminal, criminal procedural, civil, civil procedural, arbitration, etc.) [Nguyen Van Tien, 2019, p. 25]. Today, in the conditions of market economy, a legal entity also assumes a great risk of becoming a victim of criminal acts during participation in various social relations. The harm caused by a crime to a legal entity may have a property and (or) non-property nature. However, as the analysis shows, compensation to a victim – a legal entity for harm caused as a result of the commission of crimes, is carried out limitedly for a number of different reasons. Such a restriction may cause serious violations of the rights and legitimate interests of a legal entity, which cannot be admitted during the preliminary investigation.

As a rule, for the implementation of the above mentioned aspect, it is necessary, first of all, to establish the presence, extent and nature of harm caused to a legal entity by a crime.

It should be noted that in accordance with the legislation of Russia and Vietnam, the list of circumstances that must be proved also includes the nature and extent of harm caused by a crime. That is, the activities carried out by officials of the bodies conducting criminal intelligence and preliminary investigation, upon establishing the noted circumstance during the detection and investigation of a crime, is mandatory. In this case, harm caused to a legal entity may be a property and (or) non-property character. Depending on the type of caused harm, the activity for determining their extent and nature is carried out with certain features.

First of all, it should be noted that in most cases, when a legal entity is recognized as a victim of a crime, the damage caused to this person has the property nature. Therefore, the problem associated with determining the extent of property damage in such cases acquires special significance not only in theory, but also in law enforcement practice.

At the stage of preliminary investigation, along with the obligation to prove the guilt of the person who committed the crime, officials must also use various methods, with the purpose to establish the property damage caused by the crime. And talking about the methods of establishing the extent of this type of harm, of course, first of all, it is necessary to mention the investigative actions. It is noted that the conduct of criminal intelligence measures and investigative actions not only

provides authorized officials with the opportunity to determine the extent and nature of the caused harm, but also to detect objects of criminal encroachment, which, in the form of restitution, can become a means of compensation for the property damage.

The most common criminal intelligence measures and procedural actions include the following activity: an examination, making inquiries, a study of objects and documents, obtaining computer information, inspection of a crime scene, an interrogation, a search, a seizure, and a forensic examination. It should be emphasized that in the conduct of criminal intelligence measures and investigative actions, along with the collection of evidence in a criminal case, a law-enforcement officer, an investigator, an inquirer must pay special attention to the issue related to determining the extent and nature of the harm caused by a crime.

In Russia, while checking a crime report, the investigator, the inquiry officer has the right to demand the conduct of documentary checks, audits, and other studies, as well as to instruct the inquiry body to carry out criminal intelligence measures, that gives the investigator, the inquiry officer a chance to quickly and effectively determine the extent and nature of the harm caused to the victim – to a legal entity. In addition, according to the provisions of the law, the result of criminal intelligence activities can be used as evidence in a criminal case.

In practice, criminal intelligence measures, as well as other verification methods are often used in the process of investigating crimes, the case is not excluded when a legal entity is recognized as a victim in a criminal case. It should be clarified that the implementation of these measures requires not only the activity and responsibility on the part of the investigator, the inquiry officer, but also the use of efforts in coordinating actions between the investigative divisions and the body of inquiry conducting criminal intelligence operations. In law enforcement practice, the presence of such effective interaction serves as a condition for the proper provision of compensation to a legal entity for harm caused by a crime.

The materials of the investigative practice can be cited as a positive example. Thus, a criminal case was initiated in the Investigative Unit of Criminal Investigation Division of the Internal Affairs of the Directorate for the South-Western Administrative District of the Main Directorate of the Ministry of Internal Affairs of Russia in Moscow under Part 4 of Art. 159 of the Criminal Code of the Russian Federation in relation to a group of persons (citizens of F. and others) who have stolen funds from OAO Bank Navigator. In the course of joint investigative actions and criminal intelligence measures, it was established: stolen funds in the amount of 2.1 billion rubles, and property of the victims in the amount of 3.7 billion rubles were seized in order to secure claims [15].

However, despite the importance of the above mentioned measures, in Russian investigative practice there are often cases when authorized bodies and officials ignore the timely implementation of the necessary actions aimed at ensuring compensation for property damage caused to a legal entity. It is proved by the materials *of the criminal case initiated by the Investigation Department of Intermunicipal Division of the Ministry of Internal Affairs of Russia “Glazovsky” of the Udmurt Republic under paragraph “b” of Part 4 of Art. 158 of the Criminal Code of the Russian Federation, upon the theft of funds from OOO Sladograd, causing damage in the amount of more than 18.4 million rubles. Since the registration of the crime report in the Crime Notification Logbook No. 4292 dated June 19, 2019 the pre-investigation check was carried out by the employees of the Department of Economic Security and Anti-Corruption Enforcement of the republic and the Unit of Economic Security and Anti-Corruption Enforcement the of the Ministry of Internal Affairs of Russia “Glazovsky”, the materials were received by the Investigative Unit only on November 08, 2019, that is, after 5 months. During the specified period, the body of inquiry did not take any measures aimed at reimbursing the caused material damage, including by researching the financial and economic activities of legal entities and individuals. As a result, with the help of measures taken during the investigation, the caused damage was compensated for only in the amount of 3.7 million rubles, by arresting the defendant's car [15].*

In Vietnam, activities related to harm compensation are carried out simultaneously with criminal proceedings. At the same time, the primary task of the investigative body is to establish the extent and nature of harm caused by a crime.

It should be noted that, in contrast to the legislation of Russia, Vietnam has not yet adopted a law “On Criminal Intelligence Activities.” As a rule, the implementation of this activity is determined by other bylaws. At the same time, the legislation of the Socialist Republic of Vietnam also does not provide for the possibility of using the results of criminal intelligence measures as evidence. However, despite such a limitation, information about the extent and nature of harm caused by a crime to a victim (including a legal entity), obtained in the course of these activities, is essential both for the investigation process in general and for harm compensation in particular. Vietnamese investigators also support this statement.

In addition, the extent and nature of property damage caused by a crime can also be established during other procedural actions and research. With regard to a legal entity as a victim of a crime, these checks and investigations are often appointed by Vietnamese investigators because, firstly, their implementation is carried out quickly, efficiently and effective, and secondly, their use does not always require the participation of an official conducting a preliminary investigation into a

criminal case, that it helps save valuable time. A positive example of establishing the extent of property damage caused to a legal entity by a crime is the investigation by the Investigative Police Authority of Khan-Hoa Province of the criminal case no. 14/2018 /HS on the fact of embezzlement of funds belonging to Toancau LLC. In the course of the investigation, a documentary check was carried out in a timely manner, the result of this audit made it possible to establish that the property damage caused to this victim amounted to 600,000.000 Vietnamese dongs [10].

It should also be noted that, in addition to property damage, a legal entity may suffer non-property damage (including harm to business reputation). Today, along with property, non-property benefits are also one of the necessary conditions for the successful, sustainable functioning and development of a legal entity. In this regard, we cannot but agree with the statement of M.N. Kuznetsov that the protection of such non-property benefits in the modern conditions of market economy shows not only the importance of these goods for an owner (in our case, a legal entity), but also the degree of development, legality and justice in society [9, p. 216-219]. Both Russian and Vietnamese legal scholars, studying the problems associated with compensation for harm caused by a crime, support the opinion that a legal entity that has suffered a crime has the right to compensation for harm caused to its non-property benefits [Ivanov D.A., Fadeev P.V., Alimamedov E.N., Dung V.K. 2020, p. 47; Khatuaeva V.V., 2000, p. 12; Phạm Mạnh Hùng, 2015, p. 296-298; Vũ Thị Hồng Yến, 2017, p. 127].

However, because of the peculiarities of this category of harm, the establishment of its extent causes certain difficulties in practice. And in the theory of criminal law, the opinions of scientists on this issue are also polarized. Considering business reputation as a kind of nonmaterial (non-property) benefit of a legal entity, M.E. Zhaglina emphasizes that this circumstance does not prevent either the monetary assessment of business reputation or the possibility of its transfer [Zhaglina M.E., 2010, p. 46-51].

We should agree with the position of E.V. Gavrilov and Ya.M. Ploshkina, who note that “despite the lack of an unambiguous understanding of the studied category of harm in legal science it can be divided into three approaches to understanding the reputational damage of a legal entity” [Gavrilov E.V., Ploshkina Ya. M., 2017, p. 88]. Supporters of the first approach hold the opinion that damage to the business reputation of a legal entity can be fully compensated for by reparation of losses, since this harm is a kind of property damage [Sklovsky K.I., 2017, p. 125; Olifirenko S. P., 2009, p. 13]. The second approach is based on the assertion that the reputational damage of a legal entity has a dual legal specificity, that is, it can be both a property and non-property nature [Abdrakhmanov M. Kh., 2008, p. 204; Gorodov O. A., 2011, p. 665; Parygina N. N., 2013, p. 104].

The third approach, which is the closest to us, is that damage to the business reputation caused by a crime to a legal entity is harm to the non-property benefits of this person. It should be emphasized that firstly a crime causes harm to the non-property benefits of a legal entity (including damage to business reputation), and then, on the basis of such harm, the property loss can be caused for this legal entity. However, in our opinion, like property damage, this type of harm should also be subject to compensation.

In order to ensure the right of a legal entity (a victim of a crime) for non-property damage compensation, at the stage of preliminary investigation the activities of officials should be maximally aimed at establishing all the circumstances associated with the presence of this type of harm, the causal relationship between the crime and the consequence, and also with the amount of losses caused to the legal entity [Tolstova A. E., 2018, p. 54].

We would also like to note that difficulties in establishing the extent of non-property damage caused to a legal entity by a crime directly have an adverse effect on compensation to the victim of this type of harm. The most famous way to ensure compensation for non-property damage is to file of a claim. However, this method is rarely carried out in practice. In Russia, the result of a study by a number of specialist scholars on this issue shows that a legal entity – a victim of a crime – has not filed a claim for damage compensation to its business reputation at all [P.G. Sychev, 2008, p. 25; Balovneva V. I., 2018, p. 208].

A similar situation also exists in Vietnam. In the course of our study of the materials of criminal cases investigated in Vietnam, where legal entities were recognized as victims, not a single fact of filing of a claim with the requirement to compensate for the reputational damage caused by a crime was found. This result shows that the right of a legal entity that has suffered from a crime to compensation for non-property damage is not adequately ensured. In the further development of Vietnamese legislation, it is necessary to create the most optimal mechanism, the implementation of which makes it possible to determine the extent and nature of non-material harm caused to a legal entity. The presence of the mentioned mechanism makes it possible not only to ensure the rights of a victim (an individual and a legal entity), but also to restore social justice and legality in society.

#### **4. Conclusions**

On the basis of the study, the authors drew the conclusion that the right to compensation for criminally inflicted harm is one of the most important rights of legal entities who have suffered from a crime. To ensure the right of legal entities, victims of crimes, for harm compensation, first of all, it

is necessary to establish the presence, nature, extent and other information regarding the harm caused by the crime. It is noted that the harm caused to a legal entity by a crime can be property and (or) non-property character. At the same time, depending on the nature of the harm, the activity establishing its extent and nature is carried out with certain characteristics. In particular, the mechanism for establishing the extent of non-property damage inflicted on a victim – a legal entity – needs further improvement. At the same time, officials, within the framework of the procedural competence established by law, should pay utmost attention to determining the extent and nature of harm caused to a legal entity in pre-trial proceedings in criminal cases through the conduct of criminal intelligence measures and investigative actions, as well as competently apply the norms of criminal intelligence legislation, criminal and criminal procedure law.

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